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THE
FIVE ACTS
CALLED
MR. PEEL'S ACTS,
REDUCED TO DISTINCT HEADS,
AND ADAPTED TO THE ARRANGEMENT OF
BURN'S JUSTICE.
By ISAAC ESPINASSE, Esq.

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THE
FIVE ACTS
CALLED
MR. PEELE'S ACTS,

(7 & 8 GEO. IV. c. 27. 28. 29. 30. 31.)

REDUCED TO DISTINCT HEADS,
AND ADAPTED TO THE ARRANGEMENT OF
BURN'S JUSTICE;

POINTING OUT
THE ALTERATIONS MADE BY THOSE ACTS

AND
The present State of the Law.

By ISAAC 'ESPINASSE, Esq.
ONE OF THE BENCHERS OF THE HONOURABLE SOCIETY OF GRAY'S INN,
AND AN ACTING MAGISTRATE FOR KENT.

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P R E F A C E.

TO the united approbation of the Bench and Bar of England of the merits of the acts passed during the last session of parliament for the amendment of the Criminal Law of the country, my testimony to the same effect can add but little; of the ability, however, with which they have been prepared, and of the benefits which may be expected to result from them, I am in some degree qualified to pronounce, from long experience at the bar, and from having for some years acted as a magistrate for the county in which I reside. The extent of the jurisdiction possessed by justices of the peace, and the variety of matters subjected to their cognizance, are now of considerable extent. These are to be collected from a multiplicity of acts of parliament on the same, as well as on different subjects, in which amendment on amendment, and repeal upon repeal, so crowd the statute book, that to ascertain what the existing law is, requires no small share of industry and intelligence. To reduce them into order; to connect them into consistency; to divest them of obscurity, and clothe them in the language of brevity and perspicuity, required the effort of a commanding mind. The task was reserved for, and has been performed by, one of the most enlightened statesmen of the day, of this or of any other country. The five acts of the last session, which go by the title of "Mr. Peel's Acts," have erased from the statute book one hundred and forty-eight acts of parliament: at the same time that the spirit of the criminal code of English law is preserved, the course of proceeding remains unchanged, and the execution of the laws is attended with increased facility and effect.

The office of putting these laws in force in the first instance devolves upon the magistracy; they must, therefore, be accurately informed of whatever changes take place in them, to direct them in the performance of the

duties of their office. Although from the perusal of the acts of parliament themselves this information may be obtained, it will be found to be wholly insufficient to enable magistrates to act with that promptness and decision which the duties of their station require. To enable them to do so, it requires such an arrangement as shall at once, and under one head, exhibit the crime, and what circumstances are required to constitute it; the course of proceedings to be adopted to render the offender amenable to justice; and the punishment which the statutes prescribe for the offence. To answer these purposes, an alphabetical arrangement is best calculated, and it having been that in which "Burn's Justice" has been published — the text-book of all the magistracy of England, it appeared to me to be the course best calculated to convey to them information of the changes effected by "Mr. Peel's Acts;" to give them in the same form as those which now make part of that work, and into which, without difficulty, they may be embodied. The whole of these statutes are reduced under distinct heads; and to increase the facility of finding what applies to the matter immediately before the magistrate, I have not only increased the number of references, but given the head shortly which bears on each, referring at the same time to the words of the statute at length, under some head which makes part of the work; and where the section, or any part of it, appeared to me to be doubtful or obscure, I have followed the example of the author, and of his several commentators, by giving my own comment: that confers on it only the authority of the opinion of a member of the bar. I have carefully noted the statutes in "Burn's Justice" which have been repealed, and where the same head occurs in it and this work, accurately referred to the former for the whole law on the subject. I have only to add, that this work was begun for my own private use; but it appearing to me, when completed, that it might be found useful to my brother magistrates, I have been induced to give it to the world, and I hope, that in my expectations of its utility I shall not be disappointed.

Hextable House, near Dartford,
October 1827.

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P. 71. Under the head ~~Misdemeanor~~, add " See ~~Abettors~~."

Abettors.

THERE are no accessories in the highest and lowest offences. Trespasses and misdemeanors are of the latter description, and no punishment was provided for those who aided and abetted others in these offences, but who were not present at the actual commission of them. They are, however, in many instances, the parties most culpable, and are now made punishable under the two statutes of 7 & 8 G. 4. c. 29. and 7 & 8 G. 4. c. 30. in which they are termed *abettors*. By stat. 7 & 8 G. 4. c. 29. § 61. it is enacted, "That every person who shall aid, abet, counsel, or procure the commission of any *misdemeanor punishable under this act*, shall be liable to be indicted and punished as a principal offender."

Abettors in misdemeanors, when punishable by indictment.

And in the same words it is so enacted in stat. 7 & 8 G. 4. c. 30. § 26.

To aid, abet, counsel, or procure the commission of a *felony* makes the party an *accessary*, which see under that head, *post*; but to aid, abet, or assist in the commission of a *misdemeanor*, makes him what is termed an *abettor*, whose punishment depends on the nature of the offence of the principal.

The commission of any misdemeanor punishable under this act.] This means offences which are declared to be misdemeanors *punishable by indictment*, of which description there are many in both acts. (a) This will appear from the concluding words of the section, which are, that "he (the offender) shall be liable to be indicted and punished as the principal offender." By indictment is, therefore, the only course to be adopted. But where *misdemeanors are made punishable by summary conviction*, abettors in offences so punishable by a justice of peace are made punishable by conviction before a justice, by the section following, that is by stat. 7 & 8 G. 4. c. 29. § 62. by which it is enacted, "That if any person shall aid, abet, counsel, or procure the commission of *any offence which is by this act punishable on summary conviction*, either for every time of its commission, or for the first and second time only, or for the first time only, *every such person shall, on conviction before a justice of the peace*, be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender, is by this act made liable."

Abettors in offences punishable on summary conviction, are punishable by conviction before a justice as principals.

(a) As *e.g.* in stat. 7 & 8 G. 4. c. 29. ss. 21, 22. In stat. 7 & 8 G. 4. c. 30. s. 15.

Which clause is enacted in the same words in stat. 7 & 8 G. 4. c. 30. § 31. as to offences punishable by summary conviction under it.

Accessory.

[See same head in 1 *Burn's Just.* 1. (a)]

Accessories in felony, before the fact, punishable as principals.

Accessories after the fact, by imprisonment.

BY stat. 7 & 8 G. 4. c. 29. § 61. it is enacted, "That in the case of every felony punishable under this act, every principal in the second degree, and every *accessary before the fact*, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every *accessary after the fact* to any felony punishable under this act, (except only a receiver of stolen property,) shall on conviction be liable to be imprisoned for any term not exceeding two years." See abettors in cases of misdemeanors by the same section; and see title *RECEIVERS*.

In stat. 7 & 8 G. 4. c. 30. § 26. this clause is enacted in the same words as to all cases of felony punishable by that act, except only, the words "receivers of stolen property" being omitted.

Felony punishable under this act.] That is, accessories in such offences as are declared to be felonies under either of those acts. Such as under 7 & 8 G. 4. c. 29.: horse-stealing by § 25.; for the second offence of deer-stealing by § 26.: or under stat. 7 & 8 G. 4. c. 30.; setting fire to stacks of *corn* by § 17.; and damaging or destroying trees, *shrubs*, &c. § 19. *which are punishable* under this section. But it does not extend to felonies at common law, or to such as are declared to be so by any unrepealed statute. As to these, the law remains as before, and accessories in such offences still remain punishable, but not under these acts.

Except only a receiver of stolen property.] These words are found in the 61st section of stat. 7 & 8 G. 4. c. 29. and not in the 26th section of stat. 7 & 8 G. 4. c. 30. they being inapplicable to the latter, which enacts no clause respecting *stolen property*, its operation being confined to *injuries to property* only. The exception as to receivers is made here, as the remedies against receivers is otherwise provided for by subsequent clauses in this statute, for which see title *RECEIVER*.

Shall on conviction be liable, &c.] The conviction here meant is on an *indictment only*. In both sections, the punishment for the offence is mentioned, but no course of proceeding is directed, except in the concluding part of the clause, in which abettors of misdemeanors are declared to be *liable to be indicted and punished* as principal offenders; the same course must, therefore, it should seem, necessarily be followed for the higher offences.

(a) The references to *Burn's Justice* are according to the paging of the 23d edition, 1820.

Admiralty.

3

If the property has been stolen, the receiver, who is an accessory after the fact, may be either indicted as such, or for a substantive felony, for which see title *Receiver*, post, and § 54. stat. 7 & 8 G. 4. c. 29. at length, in which the repealed statutes respecting receivers are enumerated.

The stat. 43 G. 3. c. 113. respecting the trials and proceedings against accessaries, is repealed by stat. 7 & 8 G. 4. c. 27. except as to accessaries in murder and manslaughter, which statute also repeals stat. 44 G. 3. c. 92.

Action.

AS in the carrying the statutes 7 & 8 G. 4. c. 29. and 7 & 8 G. 4. c. 30. into effect, those intrusted with the execution of them might be exposed to Actions: for the protection of persons acting under them, it is enacted by stat. 7 & 8 G. 4. c. 29. § 75. "That all Actions and Prosecutions to be commenced against any person for any thing done in pursuance of this act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be, shall certify his approbation of the action, and of the verdict obtained thereupon."

Section 41 of stat. 7 & 8 G. 4. c. 30. is enacted in the same terms as to all actions or prosecutions for any thing done under *that* act.

What are the proceedings in actions brought against persons acting under stat. 7 & 8 G. 4. c. 29. and stat. 7 & 8 G. 4. c. 30.

Admiralty.

BY stat. 7 & 8 G. 4. c. 29. § 77. it is enacted, "That where any felony or misdemeanor punishable under this act shall be committed within the jurisdiction of the admiralty of *England*,

How offences committed within the ju-

Advertizing.

risdiction of the admiralty are to be tried. the same shall be dealt with, tried, and determined in the same manner as any other felony or misdemeanor committed within that jurisdiction."

This section is enacted in the same words in § 43. of stat. 7 & 8 G. 4. c. 30. as to what are offences within *that* act.

By stat. 7 & 8 G. 4. c. 28. § 12. it is enacted, "That all offences prosecuted in the High Court of Admiralty of *England* shall, upon every first and subsequent conviction, be subject to the same punishments, whether of death or otherwise, as if such offences had been committed upon the land."

Advertizing.

BY stat. 7 & 8 G. 4. c. 29. § 59. Advertizing a reward for the recovery of stolen goods, and no questions asked; or printing an advertisement to that effect, subjects the party to a forfeiture of 50*l.* to any one who will sue for it. See title **Reward**, and the section there at length.

Affidavit.

BY stat. 7 & 8 G. 4. c. 29. § 21. Stealing any affidavit from the place of its deposit, or from the person having the care of it, is made a transportable felony. See section at length, title **Record**.

Agent.

BY stat. 7 & 8 G. 4. c. 29. § 49. Embezzlement of money or property by an agent is declared to be a misdemeanor. See section at length, title **Embezzlement**.

Angling.

BY stat. 7 & 8 G. 4. c. 29. § 34. Persons found angling in private waters are subjected to a penalty of 5*l.* See section in full, title **fish**. And by § 35. their tackle is liable to be seized. See same head.

Appeal.

[See Punishment, and Warrant.]

A RIGHT of appeal against convictions is given under both statutes. It is given by stat. 7 & 8 G. 4. c. 29. § 72., which enacts, "That in all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden, not less than twelve days after the day of such conviction, for the county, riding, or division wherein the cause of complaint shall have arisen, provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause or matter thereof, within three days after such conviction, and seven clear days at least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody, and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet: and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded; and shall, if necessary, issue process for enforcing such judgment."

In what cases a party convicted has a right to appeal to the sessions.

This section is enacted in the same words by § 38. of stat. 7 & 8 G. 4. c. 30. as to similar cases arising under it; so that in all cases of convictions under either of those statutes, a right of appeal is given where the amount of the conviction exceeds 5*l.*: where the adjudication of the imprisonment exceeds one month: or where the conviction has been made before a single magistrate. The latter part of this clause is attended with some obscurity; for it may be asked, If the conviction is before a single justice, though the penalty be less than 5*l.*, or the imprisonment less than a month, has the party a right to appeal? If he has, it is tantamount to enacting that, in *every* case of a conviction before a single justice, the party has a legal appeal. Or is it meant, that in all cases of convictions before *two* justices a right of appeal is taken away? By reading the word *or* as *and*, that is, "that in all cases of convictions before a single justice, if the penalty exceeded 5*l.*, or the imprisonment a month, the party should have a right of

Apprehending.

appeal," it should seem to be more consonant to the views of the legislature to take away frivolous appeals. See title Conviction.

Appearance.

MODE of compelling.] The process to compel the appearance of a party to answer any complaint, is by summons or warrant, that is, voluntary or compulsive. In all cases of criminal and indictable offences, the process should be by warrant, to prevent the party from escaping; but in cases in which offences are punishable by mere penalties, a summons is the usual course; but as there are several offences of this description which are attended with malice and enormity, and the offender likely to abscond, by these statutes the choice of proceedings is left with the justice, by stat. 7 & 8 G. 4. c. 29. § 65., and by stat. 7 & 8 G. 4. c. 30. § 30., which sections see at length, title Process.

Apprehending.

[See title Arrest, 1 *Burn's Just.* 169., and head (here) Process to compel Appearance, post]

Persons found committing any of the offences punishable by stat. 7 & 8 G. 4. c. 29. may be immediately apprehended without a warrant, by an officer, the owner, or his servants.

The same in case of offences against stat. 7 & 8 G. 4. c. 30., angling in the day-time excepted.

AS to persons charged with offences against stat. 7 & 8 G. 4. c. 29. or against stat. 7 & 8 G. 4. c. 30.] By stat. 7 & 8 G. 4. c. 29. § 63. reciting, "That for the more effectual apprehension and discovery of all offenders punishable under this act, it is enacted, That any person found committing any offence, punishable either upon indictment or upon summary conviction by virtue of this act, (except only the offence of angling in the day-time,) he may be immediately apprehended without a warrant, by any peace officer, or by the owner of the property, on or with respect to which, the offence shall be committed: or by his servant or any person authorized by him, and forthwith taken before some neighbouring justice of the peace to be dealt with according to law."

And by § 28. stat. 7 & 8 G. 4. c. 30. it is in the same manner enacted in case of offences against that statute, and in the same words, with the exception, of the words "except the offence of angling in the day-time," there being no enactment as to it in stat. 7 & 8 G. 4. c. 30. So that whether the offence is felony or misdemeanor, the same power of immediate apprehending is given.

Any person found committing any offence, &c.] That is, in the act of doing it in view of the peace officer or of the owner of the property, the statute in such case authorizes this summary mode of apprehending the party, which is similar to the authority given to constables in cases of breach of the peace.

If the offender be absent, he must be apprehended by a warrant grounded on an information, and by which warrant the constable may be either directed to apprehend the party charged, or recourse may be had to the following proceeding, for the same purpose of apprehending him, viz.

By § 63. stat. 7 & 8 G. 4. c. 29. which goes on to enact, "That if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever on or with respect to which any such offence shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods: and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power is required, to *apprehend* and forthwith to carry before a justice of the peace the party offering the same, together with such property, to be dealt with according to law."

Or the justice may grant a search-warrant, and apprehend the party, if property is found.

The justice may grant a warrant to search for such property, as in the case of stolen goods.] The same proceedings, therefore, are to be observed as in the case of a search-warrant for stolen goods, (see 5 *Burn's Just.* p. 107.) That is, it must be granted on affidavit as to the grounds of suspicion, and be executed in the day-time, &c.; and though, in case of finding the property in the possession of any person under a warrant so granted under this section, no power is directly given by it, to take the party into custody, yet, as that is done under a search-warrant, it would seem to be warrantable to do the same in this case; particularly, as such a course is directed in the subsequent part of the clause, that of taking the party into custody where property suspected to have been improperly come by, is offered to be sold or pawned or delivered.

A warrant, however, to search any person's premises on suspicion, should not be granted, nor should any one stop a person on suspicion, unless upon very sufficient and good grounds; for the justice or person stopping him does it at his peril. It is the duty, therefore, of the justice to examine into and take down in the depositions all the facts fully and correctly. — See *Process.*

Arraignment.

WHEN the person charged is called upon to plead, it is enacted by stat. 7 & 8 G. 4. c. 28. § 1. "That if any person not having privilege of peerage, being arraigned upon any indictment for treason, felony, or piracy, shall plead thereto a plea of 'not guilty,' he shall by such plea, without any further form, be deemed to have put himself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly;" and 2dly, by § 2. of the same

Plea of not guilty on arraignment, the party may be immediately put on his trial.

Attorney.

statute, it is enacted, "That if any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy, or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of 'not guilty' on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same."

Arrest.

[See *Apprehending and Process*. No statute under this head in *Burn's Justice*, is repealed by stat. 7 & 8 G. 4. c. 27.]

Arson.

[See *Burning*.]

Assault.

ASSAULT with intent to rob, by stat. 7 & 8 G. 4. c. 29. § 6., is declared to be a felony punishable by transportation, for which section see *Robbery*.

Assault with intent to commit sodomy, an infamous crime, so declared by stat. 7 & 8 G. 4. c. 29. § 9. for which see *Crime*.

Attainder.

BY stat. 7 & 8 G. 4. c. 28. § 4. it is enacted, "That no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment."

Attorney.

[1 *Burn's Just.* 197.]

ATTORNEY is liable to transportation for embezzling money or property intrusted to him, by stat. 7 & 8 G. 4. c. 29. § 49. for which see *Embezzlement*, and that section at length. When not liable, see § 50. *ibid*.

Banker.

BY stat. 7 & 8 G. 4. c. 29. § 49. bankers embezzling money or securities intrusted to them are made liable to transportation. See section at length, title *Embezzlement*.

By § 50. of same statute they are not liable for receiving money due on any security according to the tenor and effect of it, for which see *Embezzlement*.

Banks.

[Injuries to Sea Banks or of Canals or Navigable Rivers. See same head 1 *Burn's Just.* 215., and head *Rivers and Navigation*, 5 *Burn's Just.* 61.]

BY stat. 7 & 8 G. 4. c. 30. § 12. to guard against the serious injuries arising from breaking the banks of canals or navigable rivers, it is enacted, "That if any person shall unlawfully and maliciously break down or cut down any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, whereby any lands shall be overflowed or damaged, or shall be in danger of being so; or shall unlawfully and maliciously throw down, level, or otherwise destroy any lock, sluice, flood-gate, or other work on any navigable river or canal, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and if a male, to be once, twice, or thrice publicly or privately whipped, if the court shall so think fit, in addition to such imprisonment."

Destroying any sea bank or wall of any canal or river, is made felony, with transportation for life, or lesser punishment; or any lock, sluice, &c.

Break down or cut down any sea bank or sea wall, or the bank or wall of any river, canal, or marsh.] This offence was prohibited and punished by stat. 6 G. 2. c. 37. which mentions rivers or sea banks generally; but the offence, in that statute so confined to the banks of rivers or sea banks, by stat. 4 G. 3. c. 12. was extended to rivers made navigable by act of parliament; but the present act extends it to the banks of all rivers, and to those of *canals or marshes*. Vid. 5 *Burn's Just.* 62.

Whereby any lands shall be overflowed or damaged, or shall be in danger of being so.] By the stat. 6 G. 2. c. 37. before cited, it was necessary to the offence, that an injury should be actually done to the lands by the overflowing of the waters, in consequence of the bank having been broken; but by this statute the offence is complete "*if the lands are in danger of being overflowed or damaged,*" which is properly made part of the offence, the malignity or danger of which is not diminished by reason of the circumstance, that no mischief did actually hap-

pen, and from the extent of the mischief which ensues from the breaking of the banks, it is guarded against by punishing the possibility of it.

Destroy any lock, sluice, flood-gate, or other work on any navigable river or canal.] By the stat. 8 G. 2. c. 20. these were declared to be offences, and punishable capitally; but navigable rivers only are mentioned in that act. They are, however, now by this section extended to canals, the offence of cutting or injuring the banks, extending to every river, canal, or marsh.

Shall be liable to be transported, &c.] The offence was by the 6 G. 2. capital. It is now mitigated by this clause.

Statutes re-
pealed.

Stats. 6 G. 2. c. 37. and 4 G. 3. c. 12. are now repealed by stat. 7 & 8 G. 4. c. 27.

Statutes re-
pealed.

The offence was also prohibited by stat. 4 G. 3. c. 12. vid. 5 *Burn's Just.* p. 62. But stat. 8 G. 2. c. 20. as well as stat. 4 G. 3. c. 12. are repealed by stat. 7 & 8 G. 4. c. 27. The punishment for these offences is therefore now governed by this act.

Removing the
piles of any sea
bank, &c., or
doing any da-
mage to ob-
struct the navi-
gation of any
river or canal,
made a felony,
subject to trans-
portation for
life, or a lesser
punishment.

A second description of offence coming under this head, and which, for securing the inland navigation, requires punishment, is prohibited by the same section of the act, 7 & 8 G. 4. c. 30. § 12., by which it is enacted, "That if any person shall unlawfully and maliciously cut off, draw up, or remove any *piles, chalk, or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, or shall unlawfully and maliciously open or draw up any flood-gate, or do any other injury or mischief to any navigable river or canal, with intent, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof,* every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit) in addition to such punishment."

Draw up any floodgate, or do any injury or mischief to any navigable river or canal, with intent, and so as thereby to obstruct, &c.] The injuries against which this clause is directed, and which are punishable under it, are confined to the cases of *navigable rivers or canals* only, and they must appear to have been committed with a malicious intention, and some actual injury must have ensued to the navigation; for the words are, with intent and *so as thereby to obstruct* the navigation on the river or canal. By stat. 4 G. 3. c. 12. this was declared to be an offence punishable with transportation for seven years, and was confined to rivers made navigable by act of parliament, but is now extended to canals.

To obstruct or prevent the carrying on, completing, or maintaining the navigation thereof.] The words "*carrying on and completing*" make it an offence to pull up or cut off the piles and remove them, or the chalk, &c. while the work is going on to make a river navigable, or in digging a canal for the same pur-

pose. The word *maintaining* applies to the case after either are completed.

The offence particularly pointed out by this clause of the statute was prohibited and punished by stat. 10 G. 2. c. 32. § 5., but was confined to marsh sea walls, or banks to prevent the lands from being overflowed: canals were not mentioned, as here, and the punishment was a penalty of 20*l*.

But that stat. 10 G. 2. c. 32. is now repealed by stat. 7 & 8 G. 4. c. 27., as well as stat. 4 G. 3. c. 12. prohibiting the commission of the same offences in rivers made navigable. Therefore the offences of removing piles or other materials used for securing the bank, and the pulling up or opening sluices and floodgates so as to injure the navigation in all cases of inland navigation are now confined to this statute, and punishable under it.

Statutes repealed.

The repealed statutes, by stat. 7 & 8 G. 4. c. 27. under this head, are 6 G. 2. c. 37. and 10 G. 2. c. 32., the latter of which gave also a remedy against the hundred, will be found in 2 *Burn's Just.*, title *Bank*, p. 215.; and those of 8 G. 2. c. 20. and 4 G. 3. c. 12. in 5 *Burn's Just.*, title *Rivers and Navigation*, p. 61 and 62.

Barge.

STEALING from barges in any port, &c. is made a transportable offence by stat. 7 & 8 G. 4. c. 29. § 17.; see which section at length, title *Ship*. By stat. 4 G. 4. c. 53., the benefit of clergy was given in such offence; but that act is repealed by stat. 7 & 8 G. 4. c. 27.

Barn.

[Vid. *Burning*. See 1 *Burn's Just.* 414.]

BURNING a barn with corn in it was a felony by stat. 23 H. 8. c. 1. and stat. 25 H. 8. c. 3.; but under § 2. of stat. 7 & 8 G. 4. c. 30. § 2. it is declared to be a felony, whether there is corn in it or not, and that first-mentioned statute is repealed.

By stat. 7 & 8 G. 4. c. 31. § 2., if a barn is riotously destroyed or demolished, the hundred is liable.

Beasts.

BY 7 & 8 G. 4. c. 29. § 31., stealing beasts usually kept in a state of confinement, and not the subject of larceny at common law, is made punishable by imprisonment and hard

Bleach Green.

labour, for a period not exceeding twelve months. Vid. clause at length, title *Dogs*.

Bill.

STEALING any bill for payment of money is made felony by stat. 7 & 8 G. 4. c. 29. § 5., which see, title *Security*.

Birds.

[The law is the same as *Beasts*, vid. ante, p. 11.; and see title *Pigeons*.]

Bleach Green.

STEALING from bleach green made punishable by transportation. See title *Linen Cloth*, 3 *Burn's Just.* 259. See also title *Manufacture*, stat. 7 & 8 G. 4. c. 29. § 16.

Boat.

STEALING goods from any boat or barge in any port, river, or canal, made a transportable offence by stat. 7 & 8 G. 4. c. 29. § 17., for which see *Ship*.

Bond.

STEALING bonds made felony by stat. 7 & 8 G. 4. c. 29. § 5., which see in full, title *Security*.

Brass.

STEALING brass fixed to an house, declared to be a felony by stat. 7 & 8 G. 4. c. 29. § 44., for which at length see *Lead*.

Bridges.

[Injuries to, see same head, 1 *Burn's Just.* 367.]

BY stat. 7 & 8 G. 4. c. 30. § 13. it is enacted, " That if any person shall unlawfully and maliciously pull down, or in anywise destroy any public bridge, or do any injury with intent and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit) in addition to such imprisonment."

Breaking down of public bridges punishable as felony, and liable to be transported for life, or to a lesser punishment.

Any public bridge] That is, which is in the highway, and not in a private road or way. But an individual being bound to repair it *ratione tenuræ*, or for such cause, will not prevent the offence from being punishable under this section.

With intent and so as to render such bridge or any part of it dangerous or impassable.] The offence which comes under this head must not be a casual or small injury done to the bridge; it must be of such an extent as to render the bridge dangerous or impassable, and be done with the intention of rendering it so. Unless, therefore, the bridge should be so much injured that it would be either impassable, or dangerous to be passed over, no indictment would lie; neither would an accidental injury, though the bridge were rendered impassable, be within the clause; the injury must be unlawfully done.

By stat. 1 G. 4. c. 115. what had been enacted by former acts as to the punishment of persons wilfully destroying or injuring bridges was repealed. This is, therefore, the only enactment on the subject, as no act on the subject appears to have passed since that act of 1 G. 4. c. 115.

Broker.

EMBEZZLING any money, goods, or securities intrusted to them, declared to be guilty of a misdemeanor, punishable by transportation at the discretion of the court, by stat. 7 & 8 G. 4. c. 29. § 49.; which see at length, under head *Embezzlement*.

Building.

STEALING any fixtures, glass, woodwork, &c. from any building, is declared to be felony by stat. 7 & 8 G. 4. c. 29. § 44. See section at length, title *Lead*.

Burglary.

[See same head, 1 *Burn's Just.* 393.]

The offence
and punish-
ment of bur-
glary capital.

IT is enacted, by § 11. of stat. 7 & 8 G. 4. c. 29., "That every person convicted of burglary shall suffer death as a felon. And it is thereby declared, that if any person shall enter the dwelling-house of another with intent to commit felony, or being in such dwelling-house shall commit any felony, and shall in either case break out of the said dwelling-house in the night-time, such person shall be deemed guilty of burglary."

Convicted of burglary.] Burglary is a felony at common law, and the several decisions on it given in 1 *Burn's Just.* 394. remain good law.

Shall in either case break out of the said dwelling-house.] "The breaking out of an house was declared to be burglary by stat. 12 *Ann.* c. 7. under the same circumstances as are mentioned here." 1 *Burn's Just.* 397.

That statute is now repealed by stat. 7 & 8 G. 4. c. 27., and re-enacted here as to the breaking out of a dwelling-house, and the law declared by this section.

Burglary, at common law, was not confined to the mere dwelling-house, but was extended to outhouses and offices, as barns, stables, &c., if parcel of the messuage, and occupied with it; on which many questions were raised. (See 1 *Burn's Just.* 399.) To set those doubts at rest, and to define, in what description of houses, burglary can be committed, it is enacted, by § 13. of this statute, 7 & 8 G. 4. c. 29. "That no building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for the purpose of burglary, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other."

As the enormity of the crime of burglary, consisted in the terror and alarm created by breaking into a dwelling-house after the inmates had retired to rest; where no such effect is produced, as is the case of breaking into an outhouse by night, such an offence is not visited with the same punishment as breaking into the dwelling-house. But the offence of breaking into and stealing in outhouses or offices, is punished by stat. 7 & 8 G. 4. c. 29. § 14. Which see under head *House*.

What buildings
only are part of
a house for
capital pur-
poses.

Burning.

[Same title, 1 *Burn's Just.* 413.]

This offence ranges under different heads under this statute.

- I. *Setting fire to Churches and Houses.*
- II. *To Coal Mines.*
- III. *To Ships.*
- IV. *To Corn or Crops.*

I. Setting Fire to Churches and Houses.

BY stat. 7 & 8 G. 4. c. 30. § 2. it is enacted, "That if any person shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of *England* and *Ireland*, duly registered or recorded, or shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person; with intent thereby to injure or defraud any person, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon."

Setting fire to a church, chapel, or other buildings, declared to be a capital felony.

Set fire to any church or chapel, &c.] Though a church was such a house, as that the breaking and entering of it constituted burglary (1 *Hawk. P. C.* ch. 38.), this is the first statute which made it a felony to set it on fire. The section comprises not only churches and chapels in which the regular service of the church of *England* is performed, but the chapels or places of worship of dissenters; those chapels must, however, be duly registered and recorded. Before, therefore, any justice of peace would be warranted in apprehending a person for setting fire to such a chapel, he should be satisfied by due proof that it was *registered and recorded*, for to such only the protection of the statute extends.

Set fire to any house, stable, &c.] The several buildings here enumerated, and the section itself, is taken from stat. 43 G. 3. c. 58., commonly called Lord *Ellenborough's* act, now repealed, as to this head, by stat. 7 & 8 G. 4. c. 27. (vid. 1 *Burn's Just.* 417. in which the constructions on it will be found.) The offence of burning dwelling-houses had been before made a capital felony by stat. 23 H. 8. c. 1., and stat. 4 & 5 Ph. & M. c. 4., all now repealed by stat. 7 & 8 G. 4. c. 27.

Or to any building or erection used for carrying on any trade or manufacture.] This was before declared to be a capital felony, by stat. 52 G. 3. c. 130., now repealed by stat. 7 & 8 G. 4. c. 27.

Burning (Ships).

Whether the same shall be then in the possession of the offender or of any other person.] That makes it felony as well in a tenant to set fire to his own house, as if done by a stranger, if it was done with the intent following.

With intent thereby to injure or defraud any person.] This excludes fires from accident or negligence. The offence consists in doing the mischief unlawfully and maliciously, and with the intent to injure or defraud any person. The tenant of an house, therefore, wilfully setting it on fire, with the intention of injuring his landlord's property, or if, having his house insured, he should set it on fire with the intent of defrauding the insurance office, that would be clearly within the statute. The statutes above mentioned, 23 H. 8. c. 1., 4 & 5 Ph. & M. c. 4., 43 G. 3. c. 58., and 52 G. 3. c. 130., are repealed by stat. 7 & 8 G. 4. c. 27.

II. Setting Fire to a Coal Mine.

[See 1 Burn's Just. 415.]

Coal mines,
setting fire to,
capital felony.

By stat. 7 & 8 G. 4. c. 30. § 5. it is enacted, "That if any person shall unlawfully and maliciously set fire to any mine of coal or cannell coal, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon."

This was declared to be a capital felony by stat. 9 G. 1. c. 22. and 10 G. 2. c. 32. (see 1 Burn's Just. p. 288.), both now repealed by stat. 7 & 8 G. 4. c. 27., as far as relates to this offence.

III. Setting Fire to Ships.

[See 1 Burn's Just. 416. and 5 Burn's Just. 225. title Ships.]

Setting fire to
any ship, whe-
ther complete
or not, declared
to be a capital
felony.

By stat. 7 & 8 G. 4. c. 30. § 9. it is enacted, "That if any person shall unlawfully and maliciously set fire to or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon."

Unlawfully and maliciously set fire to or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state.] It is therefore felony to burn a ship on the stocks, or while under repair in dock.

With intent thereby to prejudice any owner of such ship or vessel, or of any goods on board the same, or any person who hath underwritten or shall underwrite any policy of insurance, &c.] Burning a ship may injure three descriptions of persons; the owner of the ship, or of the cargo, or the underwriter. In case of the investigation of this offence before a magistrate, the in-

tention with which the injury took place must be made the primary object of inquiry; it must appear to have been done maliciously and designedly with a view to injure the owner of the vessel, the cargo, or the underwriter; and this section extends to every description of policy of insurance, whether on the body of the ship: the freight: or goods on board, &c.

This offence was made punishable by many statutes, as 1 *Ann. st. 2. c. 9.* 11 *G. 1. c. 29.* These confined the punishment of the offence to the cases, when it was committed *by the owner, master, captain, mariner, or other officer* belonging to the ship. (See 5 *Burn's Just.* 225.) But it was by stat. 43 *G. 3. c. 113.* declared to be felony for *any person* to commit any of the offences mentioned in this section (5 *Burn's Just.* 225.); which last-mentioned statute recited, that the provisions of the former stat. 11 *G. 1.* were ineffectual, and enacted others in their room. It is now repealed by stat. 7 & 8 *G. 4. c. 27.* The law, therefore, with respect to the setting fire to ships, rests on this statute only.

For other injuries to ships, and their punishments, see post, title *Ship and Wreck.*

IV. Setting Fire to Corn and Wood.

[See 1 *Burn's Just.* 414.]

By stat. 7 & 8 *G. 4. c. 30. § 17.* it is enacted, "That if any person shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, straw, hay, or wood, every such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon; and if any person shall unlawfully and maliciously set fire to any crop of corn, grain, or pulse, whether standing or cut down; or to any part of a wood, coppice, or plantation of trees; or to any heath, gorze, or furze or fern, wheresoever the same may be growing, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Setting fire to any stacks of corn, hay, pulse, or wood, or any crops, trees, or heath, made a felony with transportation.

See the several heads of *Crops, Corn, Hay, Pulse, Straw and Wood, Plantation, Heath, Gorze, Furze, or Fern.*

Or wood.] This means dry wood, stacked for burning or other domestic uses.

Set fire to any crop of corn, grain, or pulse, whether standing or cut down.] This part of the section applies to corn or pulse in the field. The former part, to what has been brought home and made up, that is, made up into stacks.

The offences punishable under this section had been provided against by several statutes. Such as 22 & 23 *Car. 2. c. 7.* against burning stacks of corn, &c. in the night-time; stat. 9 *G. 1. c. 22.*, st. 1 *G. 1.*, st. 2. *c. 4.*, and 6 *G. 1. c. 16.*, against burning growing wood; stat. 4 & 5 *W. 3. c. 23.*, and 28 *G. 2.*

c. 19., against setting fire to heath or gorse, all of which are repealed by stat. 7 & 8 G. 4. c. 27.

Canal.

[See Banks. River.]

DESTROYING or breaking down banks of a canal is made felony by stat. 7 & 8 G. 4. c. 30. § 12.; which see at length, title Banks.

Stealing goods from any boat or barge on a navigable canal is made liable to transportation by stat. 7 & 8 G. 4. c. 29. § 17.; which see, under head Ship,

Cattle (*Stealing, killing, or maiming*).

[See same head, 1 *Burn's Just.* 445.]

Stealing horses or other cattle a capital felony; as is killing them with intent to steal the carcase or any part of them.

BY stat. 7 & 8 G. 4. c. 29. § 25. it is enacted, "That if any person shall *steal* any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, or lamb, or shall wilfully kill any of such cattle, with intent to steal the carcase or skin, or any part of the animal so killed, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon."

With the intent to steal the carcase.] To make this offence a felony, it would be necessary, that the animal should be killed, with the intention of stealing the flesh, skin, or some other part of it, such as the fat, which is frequently done: but where cattle are wantonly or maliciously killed or injured, *without any intention of stealing* any part of them, it is punished by the following act.

Killing, cutting, or maiming them a felony, with transportation for life, or less punishment.

By stat. 7 & 8 G. 4. c. 30. § 16. it is enacted, "That if any person shall unlawfully and maliciously *kill, maim, or wound* any cattle, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

The offence of *killing* cattle, may come under either of these acts, and in examining into the offence, it will be incumbent on the justice to inquire particularly, *quo animo* it was done; if done out of malice or wantonness, without any ulterior view of taking or using any part of the animal killed, this offence will come in under the latter statute only.

Unlawfully and maliciously kill, maim, or wound.] It has been held under former acts relating to this subject, that to constitute the offence, there must be malice against the owner of the cattle so killed or maimed. (See 1 *Burn's Just.* 446.) But it is now declared by § 25. of this statute, that *malice against the owner is not necessary to constitute the offence.*

The offences here prohibited and punished were the objects of the former stat. 22 & 23 *Car. 2. c. 7.*, and stat. 14 *G. 2. c. 6.*, and 15 *G. 2. c. 34.* (See 1 *Burn's Just.* p. 445.) But these acts are repealed by stat. 7 & 8 *G. 4. c. 27.* Statutes repealed.

Certificate of Conviction.

A CONVICTION for a first offence, committed against either of the acts 7 & 8 *G. 4. cc. 29, 30.* is proved by a certificate from the officer who keeps the records of the court of quarter sessions of the county, where it took place; and by stat. 7 & 8 *G. 4. c. 28. § 11.* it is enacted, "That if any such clerk, officer, or their deputy, shall utter a false certificate of any indictment and conviction for a previous felony, or if any person other than such clerk, officer, or deputy, shall sign any such certificate as such clerk, officer, or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony; and being lawfully convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court think fit), in addition to such imprisonment."

Certiorari.

[See same head, 1 *Burn's Just.* p. 448.]

BY stat. 7 & 8 *G. 4. c. 29. § 73.* it is enacted, "That no such conviction or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of His Majesty's superior courts of record." This section is enacted in the same words in stat. 7 & 8 *G. 4. c. 30. § 39.*

No such conviction or adjudication made on appeal therefrom.] The term *such* conviction would seem to apply, to such convictions only as were before mentioned in the preceding section, § 72. of same statute, that is, when the sum adjudged shall exceed 5*l.*, the imprisonment exceed one calendar month, or the conviction take place before one justice. See stat. 7 & 8 *G. 4. c. 29. § 78.*, and stat. 7 & 8 *G. 4. c. 30. § 38.* at length, title *Appeal, ante*, 5.

Cheat, or False Pretences.

By § 53. of stat. 7 & 8 G. 4. c. 29. it is declared, that no indictment for obtaining money or property under false pretences shall be removable by *certiorari*.

Challenge (of Jurors).

Every challenge of a juror beyond the legal number to be void.

BY stat. 7 & 8 G. 4. c. 28. § 3. it is enacted, "That if any person indicted for treason, felony, or piracy, shall challenge peremptorily a greater number of the men returned to be of the jury than such person is entitled by law so to challenge in any of the said cases, every peremptory challenge beyond the number allowed by law in any of the said cases shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made. See head *Jurors* (who may be challenged), 3 *Burn's Just.* 91.

Cheat, or False Pretences.

[See same head, in 1 *Burn's Just.* 467.]

The obtaining of money, chattels, or valuable securities, by false pretences, a misdemeanor, subject to transportation for seven years, or to fine and imprisonment.

If the offence be found to amount to larceny, the offender shall not for that reason be acquitted.

BY stat. 7 & 8 G. 4. c. 29. § 53. the offence of swindling or obtaining property fraudulently, is provided against; reciting, "That, whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud; for remedy thereof, it proceeds to enact, "That if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor; and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award: Provided always, that if upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor; and no such indictment shall be removable by *certiorari*; and no person tried for such misdemeanor shall be afterwards prosecuted for larceny upon the same facts."

Any chattel, money, or valuable security.] The obtaining money, goods, and the like, by false pretences, was punishable by fine and imprisonment by the statutes after mentioned: and the offence was extended to the procuring of *bills, notes, or securities* for money or goods by stat. 52 G. 3. c. 64. The words of this section extend to all.

By any false pretence obtain from any other person money, &c.] To what the words "false pretences" extend, is left undefined, and many cases will be found under this head in 1 *Burn's Just.* 470. They apply to any wilful misrepresentation or falsehood made by any person, to which the party to whom they are addressed giving credit, parts with his money or property. The representation must be untrue, and known to be so to the party who makes it; but it seems to be doubtful how far the credulity of the party detracts from the crime, when the story is utterly improbable, and the party who made it was at the time personally unknown to the party defrauded.

Obtained the property in question in any such manner as to amount to larceny.] The lesser offence, or misdemeanor, would be merged in the felony, and the party be entitled to an acquittal on the lesser offence, unless it was provided against by this clause.

The statutes respecting this offence, namely, stat. 33 *H. 8. c. 1.*, 30 *G. 2. c. 24.*, and 52 *G. 3. c. 64.*, are all repealed by stat. 7 & 8 *G. 4. c. 27.* They are found in 1 *Burn's Just.* p. 470. and p. 471.

Church or Chapel.

[See same head, 1 *Burn's Just.* 481., title *Larceny*, 3 *Burn's Just.* 219., and title *Sacrilege*, 5 *Burn's Just.* 85. See title *Burning*, *Riot.*]

BY stat. 7 & 8 *G. 4. c. 29. § 10.* it is enacted, "That if any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel in any church or chapel, shall break out of the same, every such offender being convicted thereof, shall suffer death as a felon."

Sacrilege, when capital.

And steal therein any chattel.] This forms the offence of sacrilege; and to constitute the crime under this statute, the church must either be broken into, or the offender having concealed himself when it was open, and stolen some chattel, broke out of it. The thing taken must not be any fixture of the church or pews, but *some moveable*, as the communion plate, books, and the like, which answer the description of chattels.

The feloniously taking of any goods out of any parish church, or other church or chapel, was declared to be a capital offence by stat. 1 *Ed. 6. c. 12. § 10.*, and had been so enacted by stat. 23 *H. 8. c. 1.* Both those statutes are repealed by stat. 7 & 8 *G. 4. c. 27.*

Statutes repealed.

Riotously demolishing or destroying a church or chapel is made felony by stat. 7 & 8 *G. 4. c. 30. § 8.* See *Riot.* And for the riotously demolishing and destroying such chapel as is here mentioned, the party aggrieved has his remedy against the hundred by stat. 7 & 8 *G. 4. c. 31.* See *Hundred.*

Clergy.

BY stat. 4 G. 4. c. 4. Benefit of clergy was given to several offences which before were capital, for which the punishment of transportation and corporal punishment was commuted; and still further by stat. 4 G. 4. c. 54., with the same change of punishment. Both of these statutes are now repealed by stat. 7 & 8 G. 4. c. 27., and the specific punishment enacted as to each head of offence in stat. 7 & 8 G. 4. cc. 29, 30. It is therefore unnecessary to specify the offences mentioned in stat. 4 G. 4. cc. 53, 54. as, by stat. 7 & 8 G. 4. c. 28. § 6. it is enacted, "That benefit of clergy, with respect to persons convicted of felony, shall be abolished; but that nothing herein contained shall prevent the joinder, in any indictment, of any counts which might have been joined before the passing of this act.

Clerks.

STEALING their masters' property, liable to be transported for fourteen years by stat. 7 & 8 G. 4. c. 29. § 46., which see in full, title *Servants*. And for punishment for embezzlement under stat. 7 & 8 G. 4. c. 29. § 47., see *Embezzlement*.

Coal.

SETTING fire to any coal-mine is a capital felony by stat. 7 & 8 G. 4. c. 30. § 5., and drowning or otherwise injuring it, a felony by the same statute, § 6. See both sections at length, title *Mine*.

Commitment.

AS the commitment of every offender to prison is by a warrant, it is enacted by stat. 7 & 8 G. 4. c. 29. § 73. "That no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."

The warrants of commitment mentioned in this section, and which are for convictions only, are not distinguished; and

whether they are for punishment as part of the conviction, or for non-payment of the penalty under stat. 7 & 8 G. 4. c. 29. § 67., or under stat. 7 & 8 G. 4. c. 30. § 33., appears to be doubtful; or whether, as the section uses the relative terms of *such* convictions, they are not confined to convictions mentioned in the preceding section, where the amount of the conviction exceeds 5*l.*, or the imprisonment exceeds a month, or the conviction is before a single magistrate. See title *Conviction*.

Conies.

[In 2 *Burn's Just.* 248. under title *Game*.]

WARRENS in which conies are kept and sold are objects of private property; and for the protection of them as such, by stat. 7 & 8 G. 4. c. 29. § 30. it is enacted, "That if any person shall unlawfully and wilfully, *in the night-time*, take or kill any hare or coney in any warren or *ground lawfully used for the breeding or keeping of hares or conies, whether the same be inclosed or not*, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and wilfully, *in the day-time*, take or kill any hare or coney in any such warren or ground, or shall *at any time* set or use therein any snare or engine for the taking of hares or conies, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay such a sum of money, not exceeding 5*l.*, as to the justice shall seem meet: Provided always, that nothing herein contained shall affect any person taking or killing in the day-time any conies on any sea bank or river bank in the county of *Lincoln*, so far as the tide shall extend, or within one furlong of such bank."

The killing of conies in a warren in the night-time and in the day-time is punishable as a misdemeanor.

Take or kill any hare or coney.] Hares and conies are mentioned in this statute without any distinction as to the punishment for taking or destroying them. This is the only clause which applies to the protection of conies; but the penalties for taking hares, under the game laws, still remain unaltered by this statute. See 2 *Burn's Just.* 544.

The punishment of the offence depends on the time when they are taken, whether in the day-time or at night; but the offence itself consists in the taking or killing of them.

The first part of this section makes the taking or killing of hares or conies in *the night-time* a misdemeanor, and enacts, that on conviction the offender shall be *punished accordingly*. This can only mean a discretionary punishment by the court on conviction.

In the subsequent part of this section, the killing or taking of hares or conies in *the day-time* is mentioned, and the distinction must be observed, that it is prohibited, but punished by a penalty only, whereas the taking them in the night is indictable as a misdemeanor. The *time*, therefore, when the

offence is committed, should be accurately ascertained when complaint is made of the offence; the taking them in the day-time only being punishable by a conviction before a justice of peace, except in the case of snares.

In any warren or inclosed ground.] The killing, therefore, of a hare or coney found casually abroad in any field or ground not appropriated to the keeping and breeding of them, is not punishable under this section. They are then considered as *feræ naturæ*, and not the subject of larceny; and in that case the taking of hares is only punishable under the game laws.

Or at any time, set or use therein any snare or engine for the taking of hares or conies.] The setting snares or wires at any time, that is, by day or night, is punishable under this section, but it must, from the word *therein*, used in the section, apply to the setting or using them in warrens or grounds used for the purpose of keeping or feeding them, as stated before, and not in open or uninclosed grounds. The proviso in the section respecting the sea banks in *Lincolnshire*, is to encourage the killing of conies, where they, by burrowing and undermining the banks, do considerable mischief.

The destruction and killing of conies was prohibited by very many statutes to be found in *2 Burn's Just.* 548., that is, *21 Ed. 1. stat. 2.*, *1 H. 7. c. 7.*, *3 Jac. 1. c. 13.*, *22 & 23 Car. 2. c. 25. § 4.*, *5 G. 3. c. 14. §§ 6, 8, 9.*, and *1 G. 1. c. 22.*; all of which are now repealed by *stat. 7 & 8 G. 4. c. 27.*

Statutes repealed.

Conviction.

[See Penalty.]

[See same head, *1 Burn's Just.* 586.]

A conviction for an offence under either of the acts 7 & 8 G. 4. cc. 29, 30. if satisfied, is a bar to any other proceedings for the same offence.

PENALTIES given on conviction for breaches of these statutes are either as recompence to the party injured, or for punishment; but as no one should be twice punished for the same offence, by *stat. 7 & 8 G. 4. c. 29. § 70.*, it is enacted, "That in case any person convicted of any offence punishable upon a summary conviction by virtue of this act shall have paid the sum adjudged to be paid, together with the costs under such conviction, or shall have received a remission thereof from the crown, or shall have suffered the imprisonment awarded for the non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid; in every such case he shall be released from all further or other proceedings for the same cause."

In *stat. 7 & 8 G. 4. c. 30. § 36.* is the same clause, and in the same words, as to convictions under that act. If an action of trespass is therefore brought for any of the offences mentioned in either of these statutes, which are punishable on summary conviction, and which the offender has satisfied or suffered under, in any of the ways mentioned in the statutes, he may plead that matter in bar of the action.

Regularly all convictions should be returned to the quarter sessions of the county in which the offence is committed; but as in several enactments under these statutes the punishment in case of a second conviction is much increased, it is necessary that the fact of a first conviction should be accurately ascertained; for which purpose, by stat. 7 & 8 G. 4. c. 29. § 74., it is enacted, "That every justice of the peace, before whom any person shall be convicted of any offence against this act, shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence; and the conviction shall be presumed to have been unappealed against, until the contrary shall be shown. This section is also enacted in § 40. stat. 7 & 8 G. 4. c. 30., in the same words as to convictions under that act.

Convictions to be returned to the quarter sessions.

How far evidence in future cases.

With respect to a right of appeal against conviction, by stat. 7 & 8 G. 4. c. 29. § 72., and stat. 7 & 8 G. 4. c. 30. § 38., a right of appeal to the quarter sessions is given in all cases of conviction, in which the sum adjudged to be paid on conviction exceeds 5*l.*, the term of imprisonment exceeds one calendar month, or the conviction takes place before one justice only. See the section at length, *ante*, title *Appeal*.

When a right of appeal against a conviction is given.

This section is wisely intended to guard against appeals against convictions where the penalty or punishment is so small, or the subject so unimportant, as not to be worth the trouble or expence of supporting them.

And as a means of guarding against the quashing of convictions for want of form, a settled form of conviction is given, by stat. 7 & 8 G. 4. c. 29. § 71., and by stat. 7 & 8 G. 4. c. 30. § 37. in the same words, enacting, "that the justice before whom any person shall be convicted of any offence under those acts may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require: *viz.*

_____ } *BE it remembered, that on the — day of —, to wit. } in the year of our Lord —, at — in the county of —, [or, riding, division, liberty, city, &c. as the case may be,] A. O. is convicted before me, J. P. Esq., one of His Majesty's justices of the peace for the said county, riding, &c. [as before,] for that he the said A. O. did [specify the offence and the time and place when and where the same was committed, as the case may be, and on a second conviction state the first conviction,] and (a) * I, the said J. P. adjudge the said A. O., for his said offence, to be imprisoned in the —, and there kept to hard labour for the space of — months, * [or,] † I adjudge the said A. O., for*

(a) What is between the stars is omitted where the conviction is pecuniary only; in that case it will run as follows from †.

Conviction.

his said offence, to forfeit and pay the sum of [state the penalty actually imposed, or the penalty and the value of the articles stolen or taken, or the amount of the injury done, as the case may be,] and also to pay the sum of l. for costs; and in default of immediate payment of the said sums, to be imprisoned in the ——— [or, to be imprisoned in the ———, and there kept to hard labour] for the space of ———, unless the said sums shall be sooner paid (a); or, † I order that the said sums shall be paid by the said A. O. on or before the ——— day of ———; and I direct that the said sum of l. [i.e. the penalty only,] shall be paid to ——— of ——— aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided, [or that the sum of l. [i.e. the penalty,] shall be paid to, &c. [as before,] and that the sum of l. [i.e. the value of the articles stolen, or the amount of the injury done,] shall be paid to C. D. [the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact, and dispose of the whole penalty as before.] And I order that the said sum of l. for costs shall be paid [to the complainant] [state his name]. Given under my hand and seal the day and year first above mentioned.

J. P.

In filling up the blanks by this precedent, the section on which the conviction is made must be accurately attended to and followed; as a misappropriation of the penalty would vitiate the conviction. The appropriation and mode of payment must be directed, if the conviction is under stat. 7 & 8 G. 4. c. 29., by § 66. of that statute; and if under 7 & 8 G. 4. c. 30., by § 32. of that statute; the time, too, at which the convicted party is to pay should be accurately stated, that is, whether it is to be made immediately or at a future day. See *Certificate*.

And in order to give more effect to convictions under these acts, which would be in many instances defeated, by removing them to the courts above, and by objections in point of form wholly unconnected with the merits, it is enacted, by stat. 7 & 8 G. 4. c. 29. § 73., "That no such conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by *certiorari* or otherwise, into any of His Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same." And this section is enacted in the same words in stat. 7 & 8 G. 4. c. 30. § 39.

No such conviction or adjudication made on appeal therefrom.] It does not appear that this clause is intended to be a general one, as applying to the cases of all convictions made under those acts, for the reasons given before under the head of *Cer-*

(a) Where the party convicted has time given to him, the conviction runs as follows from †.

tiorari. The clause limiting the right of appeal under both statutes is the same, and the word *such* is clearly relative. See title *Appeal*.

By stat. 7 & 8 G. 4. c. 29. § 68. it is enacted, "That where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, it shall be lawful for the justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice."

On a first conviction, the justice may discharge the party.

This is so enacted in terms, in cases of conviction under stat. 7 & 8 G. 4. c. 30. by § 34., and in both statutes it is enacted, "that it shall be lawful for the King's Majesty to extend his royal mercy to any person imprisoned by virtue of either acts, although he shall be imprisoned for non-payment of money to some party other than the crown." Stat. 7 & 8 G. 4. c. 29. § 69., stat. 7 & 8 G. 4. c. 30. § 35. Vide head *Punishment*.

Corn.

SETTING fire to any stacks of corn or grain declared to be a felony by stat. 7 & 8 G. 4. c. 30. § 17. See title *Burning*.

— And by stat. 11 G. 2. c. 22. to take away corn from any granary, boat, or barge intended for exportation, or otherwise to spoil or damage, was declared to be a felony, and the hundred liable to damages to the extent of 100%. The latter part of this stat. is repealed by stat. 7 & 8 G. 4. c. 27.

Counting-house.

BREAKING and entering a counting-house and stealing any property being therein, punishable with transportation for life and whipping, by stat. 7 & 8 G. 4. c. 29. § 15., for which see *Shop*.

Cows (*killing or maiming of*).

[See head *Cattle*.]

Crime (*Infamous*).

[See *Letters*.]

BY § 9. stat. 7 & 8 G. 4. c. 29. it is enacted, "That for defining what shall be deemed an infamous crime, that the abominable crime of buggery committed either with mankind or with beasts, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or to permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of the act."

Crops.

SETTING fire to, declared to be felony by stat. 7 & 8 G. 4. c. 30. § 17. for which see under the head of *Burning*, *ante*. The section is given at length, by which the offence of burning of any stacks of corn, grain, pulse, straw, or hay, is made a capital felony, but to set fire to any crop of corn, grain, or pulse whether standing or cut down is a transportable felony.

Statutes repealed.

These offences were prohibited and punishable by the several statutes of 43 *Eliz.* c. 7. §§ 1, 2., 22 & 23 *Car.* 2. c. 7. §§ 2. 4. 6., and 9 G. 1. c. 22. § 1., all of which are repealed by stat. 7 & 8 G. 4. c. 27. The statutes will be found in 2 *Burn's Just.* title *Corn*, p. 618., and 2 *Burn's Just.* title *Burning*, p. 415.

Dam.

BREAKING or destroying the dams of fish-ponds or mills declared to be a misdemeanour by stat. 7 & 8 G. 4. c. 30. § 15. See *Fish and Fisheries*, and *Mill*, in which that section will be found at length.

Debenture.

STEALING debentures made felony by stat. 7 & 8 G. 4. c. 29. § 5. See at length the section title *Security*.

Deed.

STEALING deeds made felony by stat. 7 & 8 G. 4. c. 29. § 5.
See the section at length, title **Security**.

Deer.

[Under the head of **Game**, 2 *Burn's Just.* p. 536.]

ALL the former statutes under this head being repealed by stat. 7 & 8 G. 4. c. 27., the whole law, as it regards this offence and the means of punishing it, is enacted in the sections 26, 27, 28, and 29. of this stat. 7 & 8 G. 4. c. 29. § 26. describes the offence and punishment; § 27. the proceedings to detect deer stealers; § 28. is to prevent persons taking them by snares and engines; and § 29. arms the keeper with powers to protect the deer from being taken.

The offence and punishment of deer stealing.

I. Of the Offence and Punishment of Deer stealing.

By stat. 7 & 8 G. 4. c. 29. § 26. it is enacted, "That if any person shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the inclosed part of any forest, chase, or purlieu, or in any inclosed land wherein deer shall be usually kept, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and if any person shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound any deer kept or being in the uninclosed part of any forest, chase, or purlieu, he shall for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum, not exceeding fifty pounds, as to the justice shall seem meet; and if any person who shall have been previously convicted of any offence relating to deer for which a pecuniary penalty is by this act imposed shall offend a second time, by committing any of the offences hereinbefore last enumerated, such second offence, whether it be of the same description as the first offence or not, shall be deemed felony, and such offender, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

The offence of deer stealing in inclosures, parks, or grounds, kept for deer, made larceny, and liable to be punished as simple larceny.

Second offence declared to be felony.

The punishment of simple larceny, mentioned in this section, is, by stat. 7 & 8 G. 4. c. 29. § 3., "That the party convicted shall be liable at the discretion of the court to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Deer (stealing, Proceedings to detect).

Course, hunt, snare or carry away, or kill and wound, or attempt to kill and wound any deer.] To complete this offence, it is not necessary that the deer should be killed and *carried away* by the offender; the attempt to do so subjects him to the punishment ordered by this section, as to *course* and *attempt to kill* are declared by it to be offences.

Deer kept and being in the inclosed part of any forest, chase, or purlieu, or in any inclosed land in which deer shall be usually kept.] This is to be noted, but as distinguishing the punishment of killing deer when at large in a forest and uninclosed ground; this latter offence being punishable only by a fine on conviction, the former offence being felony. But although a deer be found out of a park and at large, that does not take the offence out of this clause of the statute if he is killed, for the offence is killing, &c. of deer *kept* in an uninclosed part of a forest, &c. or in a park. If it would be lawful to kill deer so found at large, by breaking down the park pales, or leaving the gates open so that the deer might get out, the destruction of them would subject the offender to no punishment.

By committing any of the offences herein last enumerated.] That is, if he again commits the offence of deer stealing in *uninclosed ground*, he shall be then held to be guilty of felony, punishable as simple larceny. As by section 74. of this statute every conviction is ordered to be returned to the quarter sessions, and a copy of it is evidence, the fact of a prior conviction is ascertained without difficulty.

II. Of the Proceedings to detect Deer stealing.

Proceeding by search-warrant where persons are found in possession of venison, and subject to a penalty.

By stat. 7 & 8 G. 4. c. 29. § 27. it is enacted, "That if any deer, or skin or other part thereof, or any snare or engine for the taking of deer, shall by virtue of a search-warrant to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person being carried before a justice of peace, shall not satisfy the justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such snare or engine, and did not keep the same for any unlawful purpose, he shall, on conviction by the justice, forfeit and pay any sum not exceeding twenty pounds; and if any such person shall not under the provisions aforesaid be liable to conviction, then for the discovery of the party who actually killed or stole such deer, it shall be lawful for the justice, at his discretion, as the evidence given and the circumstances of the case shall require, to summon before him every person through whose hands such deer, or the head, skin, or other part thereof shall appear to have passed; and if the person from whom the same shall have been first received, or who shall have had possession thereof, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, be liable to the payment of such sum of money as is hereinbefore last mentioned."

Shall by virtue of a search-warrant, to be granted as herein-after mentioned, be found in the possession of any person.] In explanation of the words "to be granted as after mentioned," § 63. of this act is referred to, by which it is enacted, "That on the oath of any credible witness as to a reasonable ground of suspicion, that any person has in his possession any property, the taking of which is punishable by conviction under this statute; the justice has a power to grant a search warrant." It seems, therefore, that the justice, in cases under this section, is not authorised to grant any warrant in the first instance to apprehend the party complained of, or any except a search warrant. The justice would, therefore, do his duty here, by taking a regular deposition, as to a party being in possession of a deer's head or some part of him, or of snares or engines, he being a person not entitled to have them, or to have come lawfully by them; and stating the grounds of suspicion upon which, if they appear sufficient, the justice can issue a search warrant, but no warrant merely to apprehend the party to answer the complaint: it must be done by a search-warrant only; and if on executing it, no venison or part of a deer, or snares, &c., are found, no conviction can take place; for the words of the section require that "the deer, head, skin, or some part of him, or snares or engines, should be found in the possession of such person, or on his premises with his knowledge." There seems to be too great a degree of caution in the proceeding; and by giving the offender time to remove the deer, &c. from his premises, he may defeat any conviction; as the language of the section appears to confine the power of conviction to cases only where venison is found under a search-warrant, the effect of which may be, that though a person known be not entitled to have it, and could otherwise be proved to be possessed of it, he cannot be convicted.

Such person being carried before a justice of peace.] By the operation of a search warrant granted under this act, which is declared to be the same as in the case of one for stolen goods, if any are found, the warrant authorises the bringing the party in whose possession they are found before the magistrate. These words, therefore, refer to a case where the deer, head, or part of a deer, snares, or engines are found in the possession of the person against whom the search warrant was directed.

The remainder of this section properly gives a power to summon witnesses to investigate by whom the first offence was committed; but a power to enforce their attendance seems to be wanting.

III. Of the Proceedings to prevent the taking of Deer by Snares, Engines, or otherwise.

By stat. 7 & 8 G. 4. c. 29. § 28. it is enacted, "That if any person shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer, in any part of any forest, chase, or purlieu, whether such

Setting snares or engines for taking deer, and pulling down park

fences, penalty
not exceeding
20*l*.

part be inclosed or not; or in any fence or bank dividing the same from any land adjoining; or in any inclosed land where deer shall be usually kept; or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept; every such offender being convicted thereof before a justice of the peace shall forfeit and pay such sum of money not exceeding 20*l*., as to the justice shall seem meet."

IV. Of the Powers given to Keepers to protect the Deer.

Deer keepers
may seize guns,
&c. of offenders
taken in parks.

Stat. 7 & 8 G. 4. c. 29. § 29. enacts, "That if any person shall enter into any forest, chase, or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, it shall be lawful for every person entrusted with the care of such deer, and for any of his assistants, whether in his presence or not, to demand from every such offender any gun, fire arms, snare, or engine in his possession, and any dog there brought for hunting, coursing, or killing deer; and in case such offender shall not immediately deliver up the same to seize and take the same from him, in any of those respective places, or upon pursuit made in any other place to which he may have escaped therefrom, for the use of the owner of the deer; and if any such offender shall unlawfully beat or wound any person entrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this act, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

Resistance to
deer keepers in
discharge of
their duty pu-
nishable as lar-
ceny.

The several statutes under this head, which have been repealed by stat. 7 & 8 G. 4. c. 27., are 3 *Ed.* 1. c. 20., 21 *Ed.* 1. c. 2., 16 G. 3. c. 30., 42 G. 3. c. 107., and 51 G. 3. c. 120., which will be found in 2 *Burn's Just.* title Game, p. 536. and *post*.

Depositions.

STEALING or injuring declared to be a misdemeanor, by stat. 7 & 8 G. 4. c. 29. § 21. See *Record*.

Dock.

STEALING goods from any dock, wharf, or quay, made a transportable felony by stat. 7 & 8 G. 4. c. 29. § 17., which see in full, title Ship.

Dog.

[Same head, 1 *Burn's Just.* 744.]

BY stat. 7 & 8 G. 4. c. 29. § 31. it is enacted, "That if any person shall steal any dog, or shall steal any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender, being convicted thereof before a justice of the peace, shall for the first offence forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money, not exceeding 20*l.*, as to the justice shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender, if a male, to be once, twice, or thrice publicly or privately whipped after the expiration of four days from the time of such conviction."

Stealing dogs, birds, or beasts kept in confinement, punishable by penalty.

Punishment of hard labour for the second offence.

Not being the subject of larceny at common law.] Animals *feræ naturæ*, and others of a base nature, as bears, foxes, monkeys, cats, and ferrets, were held not to be the objects of larceny, 3 *Burn's Just.* 208, 209. It should seem, however, that by this statute the stealing of them would be now punishable under this section.

Be convicted thereof in like manner.] That is, of the second offence. To enable the justice to convict for the second offence, he should have a copy of the first conviction. That is had from the officer of the court of quarter sessions, who keeps the records of the court, and is declared to be evidence by § 74. of this statute.

And by § 32. of the same statute it is enacted, "That if any dog, or any such beast, or the skin thereof, or any such bird, or any of the plumage thereof, shall be found in the possession or on the premises of any person, by virtue of a search-warrant to be granted as hereinafter mentioned, the justice by whom such warrant was granted may restore the same respectively to the owner thereof; and the person in whose possession or on whose premises the same shall be so found (such person knowing that the dog, beast, or bird has been stolen, or that the skin is the skin of a stolen dog or beast, or that the plumage is the plumage of a stolen bird), shall, on conviction before a justice of the peace, be liable for the first offence to such forfeiture, and for every subsequent offence to such punishment, as persons convicted of stealing any dog, beast, or bird, are hereinbefore made liable to;" that is, by § 31. *supra*.

Dogs, birds, or beasts, by a search-warrant, may be restored to the owner, and party be fined.

Be found in the possession or on the premises of any person by virtue of a search-warrant to be granted as after mentioned.] This is the same course as is prescribed in the case of deer-stealing, (*ante*, p. 30.); and it should seem that the justice can-

Embezzlement (*by Clerks or Servants*).

not convict unless the dog, beast, bird, or their skin or plumage, be brought before him, together with the person in whose custody they are found, under the search-warrant granted pursuant to § 63. of this statute, which is granted on the oath of any credible witness, on suspicion as to the party being in possession of the dog, bird, beast, or their skin or plumage; and if such shall be found, the warrant being in the nature of a search-warrant for stolen goods, the party in whose custody they are found may be apprehended and brought before the justice, who may convict him. The deposition, however, on which the justice grants his warrant should be full and explicit as to the animals or their skin or plumage stolen, and the finding them in the possession of the party complained against, be fully stated in it.

Dog-stealing was first made an offence by stat. 10 G. 3. c. 18. Some defects are pointed out in it (see 1 *Burn's Just.* 746.), which are remedied by this act. The material alterations are, that the former act required two justices to convict, but which may now be done by one. The former act gave a penalty of not more than 30*l.* or less than 20*l.* for the first offence; a sum so far exceeding the probable means of persons likely to commit such an offence to pay, that it, in fact, was a conviction with a penalty of imprisonment. The present act punishes the offence with the forfeiture of the value of the dog, and such further fine as the justice may impose. Stat. 10 G. 3. c. 18. is repealed by stat. 7 & 8 G. 4. c. 27.

Embezzlement.

[See title Theft, 1 *Burn's Just.* 477. Indictment.]

This offence may be either of money or other valuable property, as securities for money, or any chattel whatever, but it must be of something of value.

Embezzlement may either be committed by clerks, servants, or others, to whom money or other property is intrusted, and each are objects of separate enactment under this statute.

I. Of Embezzlement by Clerks or Servants.

[See 3 *Burn's Just.* 182. title Larceny by Servants, now altered by this statute.]

Embezzlement
of money by
servants or
clerks, felony.

Stat. 7 & 8 G. 4. c. 29. § 47. enacts, "That for the punishment of embezzlements committed by clerks and servants, if any *clerk or servant*, or any person employed for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment receive or take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and shall fraudulently embezzle the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession

of such master, otherwise than by the actual possession of his clerk, servant, or other person so employed; and every such offender, being convicted thereof, shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned."

What is necessary to constitute this offence in the case of servants will be found fully in the 3d vol. of *Burn's Just.* above referred to, page 182. *et seq.*

The first statute which appears to have been enacted against it is stat. 21 H. 8. c. 7. which was followed by stat. 39 G. 3. c. 85. which are now repealed by stat. 7 & 8 G. 4. c. 27. There are also several for the protection of public companies, mentioned in 3 *Burn's Just.* 191. which remain unrepealed.

Servants stealing their master's property punishable by stat. 7 & 8 G. 4. c. 29. § 46. See *Servant*.

Statutes repealed.

II. Of Embezzlement by others, to whom Money or Property is entrusted as Agents.

In stat. 7 & 8 G. 4. c. 29. § 49. it is recited, "That for the punishment of embezzlements committed by *agents* entrusted with property, it is enacted, that if any money or security for the payment of money shall be entrusted to any *banker, merchant, broker, attorney, or other agent*, with any direction *in writing*, to apply such money, or any part thereof, or the proceeds or any part of the proceeds of such security, for any *purpose specified in such direction*, and he shall, in violation of good faith, and contrary to the purpose so specified, in anywise convert to his own use and benefit such money, security, or proceeds, or any part thereof respectively, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award: and if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this kingdom or of *Great Britain* or of *Ireland*, or of any foreign state, or in any fund of any body corporate, company, or society, shall be entrusted to any banker, merchant, broker, attorney, or other agent, for safe custody, or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, and he shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the

Embezzlement by agents of goods or securities a misdemeanor.

Embezzlement (by Agents).

punishments which the court may award, as hereinbefore last mentioned."

Or other agent.] The former part of this clause having mentioned by name the description of several persons who are usually employed in the transactions which form the subject of this section, such as bankers, &c. uses the word *agents* also, which applies to every person acting in any business for another, under an authority given by the principal, and who may be indicted under this act.

With any direction in writing.] This is meant to exclude all verbal orders, which if so given, no punishment can follow the disobedience or breach of them. This is proper, as the persons who may be the objects of prosecution here, are for the most part in respectable stations in life, and the punishment for committing the offences is very penal; and as the whole case must turn on the orders given in the first instance by the principal, such precaution is highly necessary. The writing, too, should express the purpose to which the money or proceeds was to be applied, or no conviction can take place.

To apply such money, or any part thereof, or the proceeds of such security, or any part of the proceeds of such security.] There are two parts in this section: the one relates to *money, or securities for the payment of money*, the other to *chattels or valuable securities*, or such instruments by which money may be raised or obtained, and which have been entrusted to the party for safe custody or other purpose. The first of these subjects the party who embezzles money, or who turns securities for money into money, and applies the proceeds to his own use, contrary to the purposes to which he was directed to apply them, to the punishment, on conviction, of transportation. The latter part of the section refers to a party applying to his own use any chattel or valuable security with which he was entrusted for safe custody, which being matter of trust, he has abused; that is a misdemeanor punishable at the discretion of the court.

Or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, &c. &c. entrusted to any banker, broker, &c. for any purpose, without any authority to sell, negotiate, transfer, or pledge.] This clause is levelled against breaches of trust, and was caused by such misconduct principally of bankers, in whose hands securities, such as exchequer bills, bonds, and the like, were lodged by their customers, and which they applied to their own use; it was declared to be a misdemeanor by stat. 52 G. 3. c. 63.; but it is not essential to this offence that the parties apply them to their own use: they are forbidden to negotiate or transfer them; so that a partial use of another person's stock, as for the purpose of stock-jobbing, seems to be an offence under this section of the statute. It is not required, as in the last case, that there should be a declaration in writing as to the use or purpose for which they are deposited in the banker's or other hands; it may be proved by parol.

Any of the punishments as hereinbefore last mentioned.] That is, as stated in the first part of this section, for embezzling money or the proceeds of money securities; to wit, transportation for

not more than fourteen or less than seven years, or such fine and imprisonment as the court shall award.

Persons, however, are often placed in particular situations, in which, although the property does not belong to them, yet they have such an interest as may entitle them to dispose of it, and of course should not be subject to the enactment stated in the last section, and the attendant punishments, it is therefore enacted, by stat. 7 & 8 G. 4. c. 29. § 50., "That nothing hereinbefore contained relating to agents shall affect any *trustee* in or under any instrument whatever, or any *mortgagee* of any property, real or personal, in respect of any act done by such trustee or mortgagee, in relation to the property comprised in or affected by any such trust or mortgage, nor shall restrain any banker, merchant, broker, attorney, or other agent, from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this act had not been passed: nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, *upon which he shall have any lien*, claim, or demand entitling him by law so to do, *unless such sale*, transfer, or other disposal shall *extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim, or demand.*"

Not to affect trustees or mortgagees; nor bankers receiving money as securities, or disposing of such on which they have a lien.

The last part of this clause only requires any comment. Bankers, factors, wharfingers, and others, have by law a lien on securities and goods which come into their possession in the course of trade, for money advanced by them; and to make their lien available, it may become necessary to turn the securities or goods into money; that, by this section, they are warranted in doing to the extent of their lien, but no further: if it were otherwise, a banker who had securities of his customer to the amount of 10,000*l.* deposited with him, might convert them all into cash for his own purposes, to cover an advance of 100*l.* which he had made. See title *Evidence*.

In the proceedings under the former acts against embezzlement, many difficulties often occurred, to obviate which, by stat. 7 & 8 G. 4. c. 29. § 48., reciting the difficulties experienced in the prosecution of offenders under it, it is enacted, "That it shall be lawful to charge in the indictment, and to proceed against the offender, for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master, within the space of six calendar months from the first to the last of such acts. And in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled to any amount, although the particular species of coin or valuable security of which such amount was composed, shall not be proved: or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion

Form of indictment for embezzling.

of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly."

Statute repealed.

Stat. 52 G. 3. c. 63. on this subject is repealed by stat. 7 & 8 G. 4. c. 27.

Engine.

[See *Mine. Riot.*]

Destroying engines used in mines, a felony.

BY stat. 7 & 8 G. 4. c. 30. § 7. it is enacted, "That if any person shall unlawfully and maliciously pull down or destroy, or damage, with intent to destroy or to render useless, any steam-engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggon-way, or trunk be completed, or in an unfinished state, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned."

Punishment which the court may award as hereinbefore last mentioned.] The punishment here meant, is that inflicted by the preceding § 6. for drowning any mine, &c.; that is, the offender is liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, with the further punishment of whipping (if a male.)

Riotously demolishing or destroying any steam-engine or other engine for working mines is made a felony, and this section is enacted in the same terms by stat. 7 & 8 G. 4. c. 30. § 8., which see at length at title *Riot*.

Throwing down or destroying any *weighing engine at a turnpike gate* is declared to be a misdemeanor, and punishable as such by stat. 7 & 8 G. 4. c. 30. § 14.; which see at length, title *Turnpike*.

The hundred are made liable to the loss of engines used in trade, if destroyed by persons riotously assembled, by stat. 7 & 8 G. 4. c. 31. § 2. See *Hundred*.

Evidence.

[Same title, 2 *Burn's Just.*, and see title *Witness*.]

Conviction not a bar to an action at law or a suit in equity.

BY stat. 7 & 8 G. 4. c. 29. § 52. it is enacted, "That nothing in this act contained, nor any proceeding, conviction, or judgment to be had or taken thereupon, against any banker, mer-

chant, broker, factor, attorney, or other agent as aforesaid, shall prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any such offence might or would have had if this act had not been passed: but, nevertheless, *the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him*; and no banker, merchant, broker, factor, attorney, or other agent as aforesaid, shall be liable to be convicted by any evidence whatever, as an offender against this act, in respect of any act done by him, if he shall, at any time previously to his being indicted for such offence, have disclosed such act on oath, in consequence of any compulsory process of any court of law or equity, in any action, suit, or proceeding which shall have been *bond fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any commissioners of bankrupt."

Conviction not admissible as evidence in such cases.

By stat. 7 & 8 G. 4. c. 29. § 24., conviction for stealing wills or title-deeds shall not prevent, lessen, or impeach any remedy at law or in equity which any party aggrieved by any such offence might or would have had if this act had not passed; but such conviction is not receivable in evidence in actions, suits, or proceedings. See *Title Deeds*.

The conviction of any such offender shall not be received in evidence in any action at law or suit in equity.] It is doubtful if the part of this section which applies to these matters will be attended with any utility, as a civil claim would be inconsistent with the idea of a misdemeanor.

No banker, &c. shall be liable to be convicted, &c. &c.] What is enacted by this clause, is consistent with the course of administering criminal justice, that what a person has been *forced to confess* shall not be used as evidence against himself in any criminal prosecution. Whenever, therefore, any of the persons here mentioned are indicted for embezzlement under this act, no use can be made, for the purpose of convicting them, of any answer in equity, or admission in the course of any proceeding at law, confessing that they had the possession of the money, chattels, securities, &c., and that they had converted them to their own use, or any thing relating to them; nor any depositions of the party indicted, taken before the commissioners of bankrupt, in which he made any confession to the same effect, he having been summoned or examined before them.

A conviction for any of the offences charged in either stat. 7 & 8 G. 4. c. 29., or stat. 7 & 8 G. 4. c. 30. respectively, having been returned to the quarter sessions, a copy of it, certified by the proper officer of that court, is sufficient evidence of such conviction, on a charge for a subsequent one, by § 74. of the first-mentioned statute, and § 40. of the latter. See both at length, title *Conviction*.

Conviction evidence on a second charge for the same offence.

By stat. 7 & 8 G. 4. c. 30. § 29., in prosecutions under that act, the party grieved may be a witness. For this section see *Witness*.

Factor.

[See Embezzlement and Evidence.]

Factors pledging goods, or documents relating to them, entrusted to them for sale, guilty of a misdemeanor, and liable to be transported for fourteen years, or a lesser punishment.

Exception, where there is a lien

IF factors entrusted with the sale of goods *pledged* them to raise money for their own use, the property was not taken out of the principal, and he might have recovered them; but there was no punishment for this breach of trust in the factor. But now by stat. 7 & 8 G. 4. c. 29. § 51. it is enacted, "That if any factor or agent, entrusted for the purpose of sale with any goods or merchandize, or entrusted with any bill of lading, warehouse-keeper's or wharfinger's certificate or warrant, or order for delivery of goods or merchandize, shall for his own benefit, and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents, as a security for any money or negotiable instrument borrowed or received by such factor or agent at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas, for any term not exceeding fourteen years, nor less than seven years, or to suffer such other punishment, by fine or imprisonment, or by both, as the court shall award. But no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same shall not be a security for or subject to the payment of any greater sum of money than the amount which, at the time of such deposit or pledge, was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent."

But no such factor shall be liable to prosecution.] A factor who advances money on goods entrusted to him to sell, has a lien on them to the amount as a pledge, when that pledge, which is the value of the goods, does not exceed the amount of the lien. It shall not be criminal in the factor to pledge goods so entrusted to him to sell, or securities relating to them, to raise money on them to the extent of his lien; but as in the case of bankers (*vide ad fin.* head Embezzlement), he shall not be allowed to sell goods or securities to an amount exceeding his lien, as that would enable him to practise a fraud on those by whom he was trusted with the goods or securities.

Felony.

THE punishment for felony is thus provided for by stat. 7 & 8 G. 4. c. 28.:—

What felonies only shall be capital.

Section 7. of that statute enacts, "That no person convicted of felony shall suffer death, unless it be for some felony which

was excluded from the benefit of clergy before or on the first day of the present session of parliament, or which hath been or shall be made punishable with death by some statute passed after that day."

Section 8. of that statute enacts, " That every person convicted of any felony not punishable with death shall be punished in the manner prescribed by the statute or statutes specially relating to such felony ; and that every person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this act, and shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any time not exceeding two years ; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Section 9. And, with regard to the place and mode of imprisonment for all offences punishable under this act, it is enacted, " That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction ; and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet."

And by section 10. it is enacted, " That whenever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced ; and where such person shall be already under sentence either of imprisonment or of transportation, the court, if empowered to pass sentence of transportation, may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment or transportation to which such person shall have been previously sentenced, although the aggregate term of imprisonment or transportation respectively may exceed the term for which either of those punishments could be otherwise awarded."

And it is further enacted, by section 11., " That if any person shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, such person shall, on such subsequent conviction, be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not less than four years, and, if a male, to be once or twice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment ; and in an indictment for any such felony committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise

Felonies under this or other acts how punishable.

When imprisonment with hard labour, or solitary confinement, may be part of the sentence.

If a person, under sentence for another crime, is convicted of felony, the court may pass a second sentence, to commence after the expiration of the first.

Punishment for a subsequent felony.

Form of indictment for the subsequent felony.

What shall be sufficient proof of the first conviction.

describing the previous felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer (for which a fee of 6s. 8d., and no more, shall be demanded or taken), shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same." For remainder of section see *Certificate*.

Fences (*Damaging or destroying*).

[See *Trespass*, and 5 *Burn's Just.* 643.]

Malicious injuries to fences punishable by fine; the same as to gates and stiles.

THE punishment for this offence is the same in stat. 7 & 8 G. 4. c. 29. § 40. as in stat. 7 & 8 G. 4. c. 30. § 23.: they differ only in the wording in the beginning; the first applying to *stealing*, the latter to *injuring* them. By stat. 7 & 8 G. 4. c. 30. § 23. it is enacted, "That if any person shall unlawfully and maliciously *cut, break, throw down, or in any wise destroy* any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, every such offender, being convicted before a justice of the peace, shall, for the first offence, forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding 5*l.*, as to the justice shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender, if a male, to be once, twice, or thrice publicly or privately whipped, after the expiration of four days from the time of such conviction."

By stat. 7 & 8 G. 4. c. 29. § 40. it is enacted, "That if any person shall *steal*, or shall cut, break, or throw down, with intent to steal, any part of any *live* or dead fence, or any wooden post, pale, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, every such offender, being convicted before a justice of the peace, shall, for the first offence, forfeit and pay, over and above the value of the article or articles so stolen, *or the amount of the injury done*, such sum, &c." From these words in both statutes the enactment as to the punishment on conviction is the same, and in the same words. The punishment, therefore, under stat. 7 & 8 G. 4. c. 29.

is the same as stated at length in the section from stat. 7 & 8 G. 4. c. 30. above given.

Any fence of any description.] This, it should seem, in stat. 7 & 8 G. 4. c. 30. § 23., would include live fences, as quickset or the like, as well as posts, pales, or dead fences of any sort. The words are general; but live fences are mentioned in stat. 7 & 8 G. 4. c. 29. § 40. Wall, stile, and gate being particularly mentioned, a conviction for injuries to them must state them as they are.

Being convicted before a justice of the peace.] For the purpose of a conviction, the justice should regularly issue a summons on a formal deposition taken of the complaint, for the party complained against to appear to answer the complaint. But as a summons might be unattended to, and so conviction be delayed or evaded, by stat. 7 & 8 G. 4. c. 30. § 30., and c. 29. § 55., for the purpose of compelling an appearance, it is, *inter alia*, enacted, "That the justice before whom the charge shall be made may (if he shall so think fit), without any previous summons, unless where otherwise specially directed (which is not the case here), issue *such* warrant (that is, such as is described in a preceding part of the section), *for apprehending such person, and bringing him before himself or some other justice*; and the justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case." See the sections at length, title *Process*.

And if any person so convicted shall be afterwards guilty of any of the said offences, and shall be convicted thereof in like manner.] A conviction for a second offence is not punishable by penalty, but by imprisonment and hard labour. The second conviction must, therefore, state the first conviction, which should be proved to have taken place by the production of a copy of the first conviction from the officer at the sessions with whom the first conviction is lodged; and a copy of it is declared to be evidence by section 40. of this statute. Should a party be committed without a regular second conviction for this offence, an action for false imprisonment will lie against the justice who committed the person.

The offences here prohibited were so by stat. 1 G. 4. c. 56., 6 G. 4. c. 127., and stat. 7 G. 4. c. 69.; all which are repealed by stat. 7 & 8 G. 4. c. 27. Statutes repealed.

To steal any iron or metal fences fixed in the ground, is declared to be felony by stat. 7 & 8 G. 4. c. 29. § 44. See section in full, title *Lead*. And to destroy fences of grounds where deer are kept, is further punishable by stat. 7 & 8 G. 4. c. 29. § 28. See *Deer*.

Fenn.

SETTING fire to it declared to be felony by stat. 7 & 8 G. 4. c. 30. § 17.; for which section, see at length, title *Heath*.

Fish and Fisheries.

[Same title 2 *Burn's Just.* 389. See *Mill. Oysters.*]

THIS head not only respects the stealing or destroying of fish, but also injuries to fish-ponds and places where fish are kept: the first under stat. 7 & 8 G. 4. c. 29., the latter under stat. 7 & 8 G. 4. c. 30.

I. As to the Offence of stealing and destroying Fish.

Taking or destroying fish in water near a dwelling, a misdemeanor.

By stat. 7 & 8 G. 4. c. 29. § 34. it is enacted, "That if any person shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly."

There is less accuracy in this section than in any other of this admirable statute, by not more strictly and accurately defining the right to the water for the fishing in which a conviction is given by this section. Where water runs between the lands of two different persons, each has a right to the water *ad flum aquæ*, that is, to a moiety of the stream; and yet this moiety may run through land adjoining the dwelling-house of the other. The party entitled to prosecute for this misdemeanor should have a right of several fishery, and not, as described here, a right of fishery generally; as there are several rights of fishery, as a several fishery, a free fishery, and a common of piscary: for an injury to a party's rights to the latter, as it is shared with others, it could not be the intention of the legislature to give this penalty; the sound construction, therefore, of this section should seem to require that the fishery should wholly belong to and be in the land in his possession.

Run through or be in any land.] That is, running or stagnant water in ponds in his lands.

Section continued: "And if any person shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as aforesaid, but which shall be private property, or in which there shall be any private right of fishery, every such offender, being convicted thereof before a justice of peace, shall forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding 5*l.*, as to the justice shall seem meet."

Any fish in any water not being such as aforesaid.] That is, not any water belonging to a dwelling-house; but any water applies to ponds in which the offence may be committed.

Which shall be private property, or in which there shall be any private right of fishery.] Where water runs entirely through

private property, so that the land on both sides of it belongs to the same owner, it would come within the description of fishery intended by this section; but the term *private right of fishery* is inaccurate, for the reason stated in the preceding comment.

*Over and above the value of the fish taken (if any), such sum of money, not exceeding 5*l.*, as to the justice shall seem meet.]* This latter part of the clause makes the attempting to take or destroy the fish a misdemeanor; but to subject the party to a penalty, it should seem that there must be some fish taken or destroyed.

Same section continued: "Provided always, that nothing hereinbefore contained shall extend to any person angling in the day-time; but if any person by angling in the day-time shall unlawfully or wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, he shall, on conviction before a justice of peace, forfeit and pay any sum not exceeding 5*l.*; and if in any such water as last mentioned, he shall on the like conviction forfeit and pay any sum not exceeding 2*l.* as to the justice shall seem meet."

This clause is something obscure, but is meant as a mitigation of the penalty in favour of persons angling in the day-time; but as the punishment of taking or destroying fish in the first-mentioned water declares the party to be guilty of a misdemeanor, this subjects the angler to a penalty not exceeding 5*l.* As the conviction for taking fish in the second described water subjects the party to a penalty of the value of the fish and a penalty not exceeding 5*l.*, this fixes the penalty on the angler not to exceed forty shillings.

Same section continued: "And if the boundary of any parish, township, or vill shall happen to be in or by the side of any such water as is hereinbefore mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill adjoining thereto."

And for the speedy prevention of this offence, when it is being committed, for the words of the following section being "found fishing," to which the other words apply by stat. 7 & 8 G. 4. c. 29. § 35. it is enacted, "That if any person shall at any time be found fishing against the provisions of this act, it shall be lawful for the owner of the ground, water, or fishery where such offender shall be so found, his servants, or any person authorized by him, to demand from such offender any rods, lines, hooks, nets, or other implements for taking or destroying fish, which shall then be in his possession; and in case such offender shall not immediately deliver up the same, to seize and take the same from him for the use of such owner: provided always, that any person angling in the day-time against the provisions of this act, from whom any implements used by anglers shall be taken, or by whom the same shall be delivered up as aforesaid, shall by the taking or delivering thereof be exempted from the payment of any damage or penalty for such angling."

Offence of angling liable to a penalty of 5*l.*

Tackle of anglers liable to be seized.

It is very questionable whether the summary power given in

this section of seizing the tackle of anglers will not tend to breaches of the peace. The allowing parties to decide on their own rights, and to assert them by assaults on others, may be attended with consequences not desirable, as the angler may not be disposed to surrender his tackle, &c. peaceably, or when he has a colour of right; the attempt, therefore, to seize it may lead to assaults and violence.

II. As to Injuries to Fish-ponds, Mill-ponds, and Places where Fish are kept.

Breaking down the dam of any fish-pond or mill-dam, or poisoning the fish, a misdemeanor, punishable with transportation for seven years, or lesser punishment.

By stat. 7 & 8 G. 4. c. 30. § 15. it is enacted, "That if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish-pond or of any water which shall be private property, or in which there shall be a private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill-pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

With intent thereby to take or destroy any fish in such pond or water.] The mere act of breaking down the dam of a fish-pond or water would not subject the party to the punishment of this section, unless it were done with an intention of by that means stealing, taking, or destroying the fish: for a person therefore to break the dam to irrigate his meadows, or to get water for his cattle, though it would subject him to an action of trespass, would not bring him within this section; but destroying the dam of a *mill-pond*, though done with no such ulterior view of catching fish or the like, but proceeding from malice or any bad motive, would subject the party to the punishment enacted by this section: as the latter injury is much more serious than the former, the mere act of breaking down the dam is therefore made punishable, it being so enacted in general terms.

The offence of stealing fish, or destroying them, or breaking down the dams of fish-ponds, was prohibited and punished by many statutes, viz. 3 Ed. 1. c. 20. 9 G. 1. c. 22. 22 & 23 Car. 2. c. 25. 4 & 5 W. 3. c. 23. 5 G. 3. c. 14.

These several statutes are repealed by stat. 7 & 8 G. 4. c. 27.; the many cases, therefore, in *Burn's Justice*, under this head, will now be found dead letter.

Fixtures.

STEALING of fixtures of glass, wood-work, or metal, is made felony, by stat. 7 & 8 G. 4. c. 29. § 44. which see in full, title **Lead**.

Forfeiture.

[See stat. 7 & 8 G. 4. c. 29. § 66. and c. 30. § 32. which see in full, title **Penalty**.]

Fruit.

BY stat. 7 & 8 G. 4. c. 29. § 42. the *stealing*, &c. of fruit from gardens, and by stat. 7 & 8 G. 4. c. 30. § 21. the *destroying* or *damaging* is declared to be punishable by fine and imprisonment. See those sections at length, title **Garden**.

Funds.

STEALING any tally, order, or security for money in the funds, is made felony by stat. 7 & 8 G. 4. c. 29. § 5., which see in full, title **Security**.

Furze.

SETTING fire to gorse, furze, or heath, is declared to be a felony by stat. 7 & 8 G. 4. c. 30. § 17. See title **Heath**.

Game.

[See **Conies**. **Deer**.]

Garden.

[See Trees and Vegetables.]

Stealing any fruit or vegetable production in a garden, how punished.

Punishment for the second offence.

BY stat. 7 & 8 G. 4. c. 29. § 42. it is enacted, "That if any person shall *steal*, or shall destroy or damage with *intent to steal*, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory, every such offender, being convicted thereof before a justice of the peace, shall, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six calendar months; or else shall forfeit and pay, over and above *the value of the articles so stolen*, or the amount of the injury done, such sum of money, not exceeding 20*l.*, as to the justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny.

By stat. 7 & 8 G. 4. c. 30. § 21. the same offence is prohibited and punished; and, as so, it is enacted, "That if any person shall unlawfully and maliciously *destroy, or damage* with intent to destroy, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory, every such offender, being convicted thereof before a justice of the peace, shall, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six calendar months; or else shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding 20*l.*, as to the justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and, being convicted thereof, shall be liable to any of the punishments which the court may award for the felony hereinbefore last mentioned."

That is, under § 18. of this statute, transportation for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and, if a male, to be once, twice, or thrice whipped, as before stated.

The offence provided against by these sections had been declared, by stat. 6 G. 4. c. 127., to be felony, which statute was repealed by stat. 7 G. 4. c. 69., both of which are repealed by the present statute, and the law is now as enacted in the above sections.

These two sections differ in no other respect than that the former applies to the *stealing* of the several articles mentioned in it, and the latter to malicious injuries done to it; and that in the former the offender is allowed to pay for those which are stolen, which is, of course, omitted in the latter, as nothing is

in it supposed to be taken away, but damage to be done only, for which compensation may be made.

Shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony.] The commission of the offence a second time being so penal, no conviction ought to be made on it, without the justice having before him a copy of the first conviction, which is had from the proper officer of the court of quarter sessions, by stat. 7 & 8 G. 4. c. 29. § 74. and stat. 7 & 8 G. 4. c. 30. § 40., which see at length, title *Conviction*.

Liable to any of the punishments which the court may award for the felony hereinbefore last mentioned.] That is, the punishment by stat. 7 & 8 G. 4. c. 30. § 20. ordered for destroying or damaging trees, shrubs, &c.; viz. for the first offence, over and above the amount of the injury done, such sum, not exceeding 5*l.*, as to the justice shall seem meet; and for the second offence, to be committed to the common gaol or house of correction to hard labour, for a term not exceeding twelve months, *et ultra*. See the section itself, title *Trees*.

For the offence of stealing or injuring garden-stuff in open grounds, see title *Arrestable*.

Gate.

CUTTING down, breaking, or destroying any gate is made punishable by fine, and payment of the amount of the injury done, on conviction, by stat. 7 & 8 G. 4. c. 30. § 23., which see at length, title *Fence*.

Glass.

LARCENY may be committed by stealing glass belonging to a building, by stat. 7 & 8 G. 4. c. 29. § 44. See *Lead* for the section at length.

Gorse.

SETTING fire to gorse is felony by stat. 7 & 8 G. 4. c. 30. § 17.; for which at length, see title *Wrath*.

Granary.

SETTING fire to a barn or granary is made a capital felony by stat. 7 & 8 G. 4. c. 30. § 2.; for which at length, see title **Burning**.

And for riotously destroying or demolishing a barn, the hundred are made liable by stat. 7 & 8 G. 4. c. 31. See **Hundred**.

Greenhouse.

DESTROYING or damaging plants in a greenhouse is punishable on conviction by imprisonment or fine, by stat. 7 & 8 G. 4. c. 30. § 21., and stealing them, by stat. 7 & 8 G. 4. c. 29. § 42.; for both of which see the sections at length, titles **Garden** and **Plants**.

Hare.

THE offence of killing hares is the same as killing conies, and the law is the same under stat. 7 & 8 G. 4. c. 29. § 30.; which see at length, title **Conies**.

Hay.

SETTING fire to any stack of hay is declared to be a capital felony, by stat. 7 & 8 G. 4. c. 30. § 17.; which see at length, title **Stack**, and also title **Burning**.

Heath.

BY stat. 7 & 8 G. 4. c. 30. § 17. “ If any person shall unlawfully and maliciously set fire to any heath, gorse, furze, or fern, wheresoever the same may be growing, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.”

Hedge.

PULLING down, breaking down, or destroying any hedge being a fence, is punishable by fine, on conviction, by stat. 7 & 8 G. 4. c. 30. § 23.; and *stealing* any hedge or live fence, on conviction, is subject to a fine, &c. by stat. 7 & 8 G. 4. c. 29. § 40.; for which see title *fence*.

Hops.

[See 2 *Burn's Just.* 152., title *Excise*.]

BY stat. 7 & 8 G. 4. c. 30. § 18. it is enacted, "That if any person shall unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Maliciously to cut hopbinds growing on poles, declared to be a transportable felony.

Hopbinds growing on poles in any plantation of hops.] In statutes of this description the words are to be construed strictly. To cut the shoots of hops before they are poled, is as destructive as to cut them when tied to the poles, which is not done until they have grown up to some height. Before that takes place, it would seem to be doubtful whether the offence came within the words of this section. This may, however, bear a question. The offence, however, is confined to injuries done in hop-grounds and plantations, and not to the cutting of such hops as are often found in the hedges of old plantations. The cutting of hopbinds was declared to be a capital offence by stat. 6 G. 2. c. 37. §§ 5, 6., but it is repealed by stat. 7 & 8 G. 4. c. 27. And by stat. 10 G. 2. c. 32., the hundred was liable to make good the loss; but that statute is repealed by stat. 7 & 8 G. 4. c. 27.

Statutes repealed.

Hop Oast.

[See *Burning*.]

FOR the riotously destroying or demolishing an oast house, the hundred are liable in damages to the party injured by stat. 7 & 8 G. 4. c. 31. § 2. See *Hundred*.

Horses (*Stealing or maiming*).

BY stat. 7 & 8 G. 4. c. 29. § 25. *stealing* any horse, mare, or gelding is declared to be a capital felony, for which see *Cattle*.

By stat. 7 & 8 G. 4. c. 30. § 16. *killing, maiming, or wounding* them is made felony with transportation, for which also see *Cattle*.

House.

[See title *Larceny from the House*, 3 *Burn's Just.* 218.]

INJURIES to the house are protected by various sections of these statutes. 1st. To set fire to any house is made a capital felony by stat. 7 & 8 G. 4. c. 30. § 2.: see *Burning*. 2d. Riotously to destroy or demolish a house, is made also a capital felony by § 8. of the same statute: see head *Riot*. And in those cases the owner may recover full damages against the hundred, by stat. 7 & 8 G. 4. c. 31. § 2. 3d. Larceny as connected with the house, is either from the dwelling-house or out-houses, or offices.

The offence of breaking into a dwelling-house at night has been already treated of under the head of *Burglary, ante*.

I. Of the Offence of stealing from the Dwelling-house.

Offences of housebreaking and larceny in the dwelling-house, when capital.

By stat. 7 & 8 G. 4. c. 29. § 12. it is enacted, "That if any person shall *break and enter any dwelling-house*, and steal therein any chattel, money, or valuable security, to any value whatever; or shall steal any such property to any value whatever, in any dwelling-house, *any person therein being put in fear*; or shall steal in any dwelling-house, any chattel, money, or valuable security, to the value in the whole of five pounds or more; every such offender, being convicted thereof, shall suffer death as a felon."

This section contains three different offences, each of them capital, and which generally go under the title of housebreaking, though the term properly applies to the first only, and they must be kept distinct. There are many statutes under this head to be found in 3 *Burn's Just.* 219. *et ultra*, and which will be mentioned hereafter, all of which are repealed.

1. The first offence under this section which is made capital is the *breaking into the dwelling-house* and stealing property, even of the smallest value. Whether there was any one in it or not at the time, makes no difference in the offence, nor whether it was done by day or by night; but if at night, it may amount to burglary.

2. The second offence consists in putting some person then in the house in fear, and, though the house was not broken, plundering it of property; the person in the house being prevented by fear and intimidation, from making any resistance; and in this as in the last case, the amount of the property taken is no ingredient in the offence.

3. The third offence is the stealing of property to the amount of five pounds from a house, whether there be any person in it or not, or put in fear or not, or whether it was done by day or by night. These offences, which were confused and complicated under the former statutes, are by this section simplified, and rendered accurate and intelligible, and the jury saved from committing what was a breach of their oath, finding an untrue value of stolen property. The statutes which applied to these different offences are, stat. 23 *H. 8. c. 1. § 3.*, 1 *Ed. 6. c. 12. § 10.*, 5 & 6 *Ed. 6. c. 9. § 4.*, 39 *Eliz. c. 15.*, 3 & 4 *W. & M. c. 9.*, 10 & 11 *W. 3. c. 23.*, 12 *Ann. c. 7.*; all of which are repealed by stat. 7 & 8 *G. 4. c. 27.*

Statutes repealed.

As these offences can be committed in the *dwelling-house* only, what shall be deemed a dwelling-house, within the meaning of this clause of the statute, is the same as has been before stated to constitute burglary, as to what shall be deemed a dwelling-house for the purpose of burglary; that is, that no building within the curtilage shall be deemed part of the dwelling-house, unless there be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from one to the other. This is so enacted and declared by § 13. of this act, 7 & 8 *G. 4. c. 29.*; which see before, under the head of *Burglary*, p. 14.

II. Of the Offence of stealing from Out-houses or Offices.

The offence of stealing from an *out-house*, or part of the offices under the same curtilage, is thus prohibited and punished:

By stat. 7 & 8 *G. 4. c. 29. § 14.* it is enacted, "That if any person shall *break and enter* any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned; every such offender being convicted thereof, either upon an indictment for the same offence, or upon an indictment for burglary, house-breaking, or stealing to the value of five pounds in a dwelling-house, containing a separate count for such offence, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and, if a male, to be once, twice, or thrice, publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Breaking into and stealing in an outhouse or other building adjoining to the dwelling-house, not part of it, but within the curtilage.

Shall break and enter any building, such building being within the curtilage of the dwelling-house, and steal therein any money, &c.] To constitute the offence under this section, two things

are necessary; 1st, the house must be broken, and something be taken, but the amount in value is unimportant; and, 2dly, the house so broken must be within the curtilage of the dwelling-house, that is, in the common phrase, be one of the offices; a building, therefore, standing at a distance from the house would not answer the description of *house* mentioned in this section.

Occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned.] That is, not being what is deemed part of the dwelling-house in which a burglary may be committed, as described in stat. 7 & 8 G. 4. c. 29. § 14. for which see title *Burglary*; nor being a building or house having communication between the dwelling-house and such building, either immediate or by means of a covered and inclosed passage leading from one to the other, but standing apart, at the same time forming the curtilage or part of the offices; if they were so connected, the breaking and entering of such a house would constitute burglary.

A separate count for such an offence.] A count in the indictment on this section, for breaking and entering an out-house, may be either single or joined with one for burglary, housebreaking, or stealing to the value of five pounds; but there must be a distinct count for the offence under this section of the statute, or the party cannot be convicted.

For the *riotously demolishing a house*, the party injured is entitled to sue the hundred, and require full compensation by stat. 7 & 8 G. 4. c. 31. § 2.: see *Hundred*. Setting fire to a house, see *Burning and Riot*. Stealing fixtures belonging to a house, see stat. 7 & 8 G. 4. c. 29. § 44. title *Lead*.

Hundred.

FOR injuries to private property the hundred had been made liable by several statutes: the principal of these were stat. 1 G. 1., stat. 2. c. 5., stat. 9 G. 1. c. 22., stat. 22 G. 2. c. 46., and 57 G. 3. c. 19., and 3 G. 4. c. 33., all of which are repealed by stat. 7 & 8 G. 4. c. 27., and the law on the subject comprised in this act of parliament.

The hundred shall make full compensation for the damage done by rioters in certain cases.

It is enacted by stat. 7 & 8 G. 4. c. 31. § 2. "That if any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of *England* and *Ireland*, duly registered or recorded, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or branch thereof, or any machinery, whether fixed or movable, prepared for or employed in any manufacture, or in any branch thereof, or any steam-engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, shall be

feloniously demolished, pulled down, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, ward, or other district in the nature of a hundred, by whatever name it shall be denominated, in which any of the said offences shall be committed, shall be liable to yield full compensation to the person or persons damnified by the offence, not only for the damage so done to any of the subjects hereinbefore enumerated, but also for any damage which may at the same time be done by any such offenders to any fixture, furniture, or goods whatever, in any such church, chapel, house, or other of the buildings or erections aforesaid."

When, therefore, such injury has been done as entitles a party to redress, that is, by rioting, his first step is to apply to a justice of the peace for the purposes mentioned in this section, as to which, it is by §3. enacted, "That no action or summary proceeding, as hereinafter mentioned, shall be maintainable by virtue of this act, for the damage caused by any of the said offences, unless the person or persons damnified, or such of them as shall have knowledge of the circumstances of the offence, or the servant or servants who had the care of the property damaged, *shall within seven days after the commission of the offence go before some justice of the peace residing near and having jurisdiction over the place where the offence shall have been committed, and shall state upon oath before such justice the names of the offenders if known, and shall submit to the examination of such justice touching the circumstances of the offence, and become bound by recognizance before him to prosecute the offenders when apprehended*: provided also, that no person shall be enabled to bring any such action, unless he shall commence the same within three calendar months after the commission of the offence."

Party damnified to comply with certain conditions.

Limitation of time for actions.

These proceedings the justice should keep, to produce at the trial of the action against the hundred.

In the following section, the service of the process is directed, in which the justice is perfectly passive, as he is merely to receive notice of the process served on the high constable. But afterwards, if, on examination of the facts of the case, it appears to the high constable and inhabitants that no defence can be made to the action, and that is communicated to the justices, their approbation is necessary to be given to the allowing judgment to go by default. This consent should not be withheld when the inhabitants, who are the parties liable, have agreed to it.

To this effect, § 4. enacts, "That no process for appearance in any action to be brought by virtue of this act against any hundred or other like district shall be served on any inhabitant thereof, except on the high constable or some one of the high constables (if there be more than one), who shall within seven days after such service give notice thereof to two justices of the peace of the county, riding, or division in which such hundred or district shall be situate, residing in or acting for the hundred or district; and such high constable is hereby empowered to cause to be entered an appearance in the said action, and also

Process in the action against the hundred to be served on the high constable, who may defend, or let judgment go by default, as advised.

to defend the same on behalf of the inhabitants of the hundred or district, as he shall be advised; or, instead of defending the same, it shall be lawful for him, with the *consent and approbation of such justices, to suffer judgment to go by default*; and the person upon whom, as high constable, the process in the action shall be served, shall, notwithstanding the expiration of his office, continue to act for all the purposes of this act until the termination of all proceedings in and consequent upon such action; but if such person shall die before such termination, the succeeding high constable shall act in his stead."

Inhabitants of the hundred competent witnesses.

And if the cause goes on to trial it is enacted, by § 5. "That in any action to be brought by virtue of this act against the inhabitants of any hundred or other like district, or against the inhabitants of any county of a city or town, or of any such liberty, franchise, city, town, or place, as is hereinafter mentioned, no inhabitant thereof shall, by reason of any interest arising from such inhabitancy, be exempted or precluded from giving evidence either for the plaintiff or for the defendants."

This is the case where the interest is so small, and is now enacted in all cases of mere public rights or claims.

The high constable being the acting defendant in the action against the hundred, if the verdict goes in favour of the plaintiff, provision must be made to satisfy the verdict, which is directed to be done out of the money in the county treasurer's hands; with this the justices have nothing to do, unless there should be a deficiency. This is done by the justices at sessions.

If plaintiff recovers, the sheriff, on receipt of the writ of execution, shall make out a warrant directing the treasurer of the county to pay the amount.

§ 6. And be it enacted, "That wherever the plaintiff in any such action shall recover judgment, whether after verdict or by default or otherwise, no writ of execution shall be executed on any inhabitant of the hundred or other like district, nor on such high constable; but the sheriff, upon the receipt of the writ of execution, shall (on payment of the fee of five shillings and no more) make his warrant to the treasurer of the county, riding, or division in which such hundred or other like district shall be situate, commanding him to pay to the plaintiff the sum by the said writ directed to be levied, and such treasurer is hereby required to pay the same, as also any other sum ordered to be paid by him by virtue of this act, out of any public money which shall then be in his hands, or shall come into his hands before the next general or quarter sessions of the peace for the said county, riding, or division; and if there be not sufficient money for that purpose before such sessions, he shall give notice thereof to the justices of the peace at such sessions, who shall proceed in the manner hereinafter mentioned."

Mode of reimbursing the high constable for his expences in defending the action, &c.

Whether the verdict is in favour of the hundred or not, certain expences are necessarily incurred by the high constable. These are provided for by § 7., which for the purpose of indemnifying the high constable and the county treasurer, enacts, "That if such *high constable* of the hundred or other district sued *shall produce and prove before any two justices of the peace of the county, riding, or division, residing in or acting for such hundred or district, an account of the just and necessary expences which he shall have incurred in consequence of any such action as aforesaid,*

such justices shall make an order for the payment thereof upon the treasurer of the county, riding, or division in which such hundred or district shall be situate; and if in any such action judgment shall be given against the plaintiff, the high constable shall in like manner be reimbursed for the just and necessary expences by him incurred in consequence of such action, over and above the taxed costs to be paid by the plaintiff in such case; and if it shall be proved to any two such justices that the plaintiff in the action is insolvent, so that the high constable can have no relief as to such taxed costs, such justices shall make an order upon the treasurer of the county, riding, or division as aforesaid, for the payment of the amount of such taxed costs; and the justices of the peace at the next general or quarter sessions of the peace to be holden for any such county, riding, or division, or any adjournment thereof, shall direct such sum or sums of money as shall have been paid or ordered to be paid by the treasurer by virtue of any such warrant or order as hereinbefore mentioned, to be raised on the hundred or other like district against the inhabitants of which any such action shall have been brought, over and above the general rate to be paid by such hundred or district in common with the rest of the county, riding, or division, under the acts relating to county rates; and such sum or sums shall be raised in the manner directed by those acts, and shall be forthwith paid over to the treasurer."

Reimbursing
the county
treasurer.

When the injury done is limited, and the only course to indemnify the sufferer was by action, the costs were often considerable, although the verdict might be for a small sum, it was therefore deemed expedient to provide a summary mode of proceeding where the damage is of small amount; it was therefore enacted, by § 8. of this statute, "That it shall not be lawful for any person to commence any action against the inhabitants of any hundred or other like district, where *the damage alleged to have been sustained* by reason of any of the offences in this act mentioned, shall *not exceed the sum of thirty pounds*, but the party damnified shall, within seven days after the commission of the offence, give a notice in writing of his claim for compensation, according to the form in the schedule hereunto annexed, to the high constable or some one of the high constables (if there be more than one) of the hundred or other like district in which the offence shall have been committed; and such high constable shall, within seven days after the receipt of the notice, exhibit the same to some two justices of the peace of the county, riding, or division in which such hundred or district shall be situate, residing in or acting for such hundred or district, and they shall thereupon appoint a special petty session of all the justices of the peace of the county, riding, or division, acting for such hundred or district, to be holden within not less than twenty nor more than thirty days next after the exhibition of such notice, for the purpose of hearing and determining any claim which may be then and there brought before them on account of any such damage; and such high constable shall, within three days after such appointment, give

Mode of proceeding in cases where the damage does not exceed 30l.

notice in writing to the claimant, of the day and hour and place appointed for holding such petty sessions, and shall within ten days give the like notice to all the justices acting for such hundred or district; and the claimant is hereby required, to cause a notice in writing, in the form in the schedule hereunto annexed, to be placed on the church or chapel door, or other conspicuous part of the parish, township, or place in which such damage shall have been sustained, on two *Sundays* preceding the day of holding such petty session." This section, therefore, points out a summary course of proceeding, and the necessity of an action is avoided.

Such cases to be settled by the justices at a special petty sessions.

§ 9. And it is further enacted, "That it shall be lawful for the justices, not being less than two, at such petty session or any adjournment thereof, to hear and examine upon oath or affirmation the claimant, and any of the inhabitants of the hundred or other like district, and their several witnesses, concerning any such offence, and the damage sustained thereby; and thereupon the said justices, or the major part of them, if they shall find that the claimant has sustained any damage by means of any such offence, shall make an order for payment of the amount of such damage to him, together with his reasonable costs and charges, and also an order for payment of the costs and charges (if any) of the high constable or inhabitants, and shall direct such order or orders to the treasurer of the county, riding, or division in which such hundred or district shall be situate, who shall pay the same to the party or parties therein named, and shall be reimbursed for the same in the manner hereinbefore directed."

Hear and determine upon oath of the claimant, and any inhabitant of the hundred or other district, and their several witnesses.] The claimant is the plaintiff, and the inhabitant the defendant. This clause makes both parties witnesses in their own cause, and the justices have also a power of examining their respective witnesses. The justices are to assess the damages as in the case of a writ of inquiry, and have a power of ordering payment of whatever sum they assess the damages at.

Penalty on high constable for neglect.

§ 10. And to provide for the execution of this proceeding, it is enacted, "That if any high constable shall refuse or neglect to exhibit or give such notice as is required in any of the cases aforesaid, it shall be lawful for the party damaged to sue him for the amount of the damage sustained, such amount to be recovered by an action on the case, together with full costs of suit."

Proceeding in case of damage to a church or chapel.

The property of many chapels regularly licensed is in individuals or in many subscribers. Where the proprietors are numerous, as they should all join in an action for injuries done to their joint property, that is provided for by § 11., by which it is enacted, "That every action or summary claim to recover compensation for the damage caused to any church or chapel by any of the offences in this act mentioned, shall be brought in the name of the rector, vicar, or curate of such church or chapel, or in case there be no rector, vicar, or curate, then in the names of the church or chapelwardens, if

there be any such, and if not, in the name or names of any one or more of the persons in whom the property of such chapel may be vested; and the amount recovered in any such case shall be applied in the rebuilding or repairing such church or chapel; and where any of the offences in this act mentioned shall be committed on any property belonging to a body corporate, such body may recover compensation against the hundred or other like district, in the same manner and subject to the same conditions as any person damnified is by this act enabled to do: provided always, that the several conditions which are hereinbefore required to be performed by or on behalf of any person damnified, may, in the case of a body corporate, be performed by any officer of such body on behalf thereof."

Every action or summary claim.] That is, the mode of proceeding directed to take place before justices of the peace by § 8. where the damage does not exceed 30*l*. The proprietors of churches or chapels, or corporations may have recourse to that remedy.

As by the former part of this act the damages when assessed were to be paid by the treasurer of the county, riding, or division, and as offences for which compensation is granted by virtue of this act, might be committed in counties of cities and towns, or in such liberties, franchises, cities, towns, and places, as either did not contribute at all to the payment of any county rate; or contribute thereto, but not as being part of any hundred or other like district; and it was expedient to provide for all such cases; it was therefore enacted by § 12., "That where any of the offences in this act mentioned shall be committed in a county of a city or town, or in any such liberty, franchise, city, town, or place, the inhabitants thereof shall be liable to yield compensation in the same manner, and under the same conditions and restrictions in all respects, as the inhabitants of the hundred; and every thing in this act in anywise relating to a hundred, or to the inhabitants thereof, shall equally apply to every county of a city or town, and to every such liberty, franchise, city, town, and place, and to the inhabitants thereof; and where the justices of the peace of the county, riding, or division are excluded from holding jurisdiction in any such liberty, franchise, city, town, or place, in every such case all the powers, authorities, and duties by this act given to or imposed on such justices, shall be exercised and performed by the justices of the peace of the liberty, franchise, city, town, or place in which the offence shall be committed; and where the offence shall be committed in a county of a city or town, all the like powers, authorities, and duties shall be exercised and performed by the justices of the peace of such county of a city or town; and in every action to be brought or summary claim to be preferred under this act against the inhabitants of a county of a city or town, or of any such liberty, franchise, city, town, or place, the process for appearance in the action, and the notice required in the case of the claim, shall be served upon some one peace officer of such county, liberty, franchise, city, town, or place; and all matters which by this act the high con-

In case of damage to property belonging to a corporation.

Where the damage is committed in any county of a city, &c., or in any liberty, &c. which is not within any hundred, or does not contribute to the county rate, such county, liberty, &c. shall be liable like the hundred.

stable of a hundred is authorized or required to do in either of such cases, shall be done by the peace officer so served, who shall have the same powers, rights, and remedies as such high constable has by virtue of this act, and shall be subject to the same liabilities; and shall, notwithstanding the expiration of his office, continue to act for all the purposes of this act until the termination of all proceedings in and consequent upon such action or claim; but if he shall die before such termination, his successor shall act in his stead.

Provision for
executing writs
in certain
places.

And by § 13. for securing the due execution of writs in the Cinque Ports, and in places where writs are directed to other officers than the sheriff, and in liberties where the sheriff is not warranted in executing writs, be it enacted, "That all other such officers to whom any writ of execution under this act shall be directed, by whatsoever name they shall be known, shall have the same power of granting a warrant for payment of the sum by such writ directed to be levied as is hereby given to the sheriff in case of a writ of execution directed to him; and that every sheriff and other such officer as aforesaid shall have authority to grant his warrant under this act, notwithstanding the offence shall have been committed in, or the treasurer or other person to whom such warrant shall be directed shall reside or be in, any liberty where the sheriff or officer is not warranted in executing writs."

Mode of reim-
bursement in
liberties, cities,
and towns not
within any
hundred, but
contributing to
the county rate.

The remaining part of this statute is confined to directions for places within the county which do not contribute to the county rate. And as to the mode of payment and reimbursement under this act in such liberties, franchises, cities, towns, and places as contribute to the payment of the county rate, but not as being part of any hundred, it is enacted by § 14. "That the warrant of the sheriff or other officer upon any writ of execution against the inhabitants of any such liberty, franchise, city, town, or place, and every order of justices for payment to the party damaged therein, or to the peace officer or inhabitants thereof, by virtue of this act, shall be directed to the treasurer of the county, riding, or division in which such liberty, franchise, city, town, or place shall be situate, who is hereby required to pay the same; and the justices of the peace of such county, riding, or division, at their next general or quarter sessions of the peace, or any adjournment thereof, shall direct such sum or sums of money as shall have been so paid or ordered to be paid by the treasurer to be raised on such liberty, franchise, city, town, or place, over and above the general rate to be paid by the same in common with the rest of the county, riding, or division, under the acts relating to county rates, and such sum or sums shall be raised in the manner directed by those acts, and shall be forthwith paid over to the treasurer."

Mode of reim-
bursement in
counties of
cities, and in
liberties, cities,
and towns not

§ 15. "And as to the mode of payment and reimbursement under this act in counties of cities and towns, and in such liberties, franchises, cities, towns, and places as do not contribute to the payment of the general county rate, be it enacted, "That all sums of money payable either by virtue of

any warrant of the sheriff or other officer, or of any order or orders arising out of any action or summary claim against the inhabitants of any county of a city or town, or of any such liberty, franchise, city, town, or place, shall be paid out of the rate (if any) in the nature of a county rate, or out of any fund applicable to similar purposes, where there is such a rate or fund therein, by the treasurer or other officer having the collection or disbursement of such rate or fund; and where there is no such rate or fund in such county, liberty, franchise, city, town, or place, the same shall be paid out of the rate or fund for the relief of the poor of the particular parish, township, district, or precinct therein, where the offence was committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and in every such case the warrant and orders shall be directed and delivered to such treasurer, overseers, or other officers respectively, instead of the treasurer of the county, riding, or division, as the case may require."

contributing to
any county rate.

§ 16. And it is further enacted, "That nothing herein contained shall extend to *Scotland or Ireland*."

This act not to
extend to Scot-
land or Ireland.

SCHEDULE.

Form of Notice to the High Constable of a Hundred or other like District, or to the Peace Officer of a County of a City or Town, or of a Liberty, Franchise, City, Town, or Place.

To the high constable [or to ——— one of the high constables] of, &c. [or to ——— a peace officer of, &c.]

I HEREBY give you notice, that I intend to claim compensation from the inhabitants of [here specify the hundred or other like district, or county of a city, &c., or liberty, franchise, &c., as the case may be], on account of the damage which I have sustained by means of [here state the offence, the time and place where it was committed, and the nature and amount of the damage]; and I hereby require you, within seven days after your receipt of this notice, to exhibit the same to some two justices of the peace of the county [riding or division] of ——— residing in or acting for the said hundred, &c. [or if in a liberty, franchise, &c. where the justices of the county, riding, or division have no jurisdiction, then say, to some two justices of the peace of, naming the liberty, franchise, &c.], [or if in a county of a city, &c. then say, to some two justices of the peace of, naming the county of the city, &c.], in order that they may appoint a time and place for holding a special petty session to hear and determine my claim for compensation by virtue of an act passed in the seventh and eighth years of the reign of king George the Fourth, intituled An act for consolidating and amending the laws in England relative to remedies against the hundred; and you are required to give me notice of the day, hour, and place appointed for holding such petty session within three days after

Interrogatory.

the justices shall have appointed the same. Given under my hand this — day of — in the year of our Lord —.
(Signed) A. B.

Form of Notice to be placed on the Church or Chapel Door or other conspicuous Part of the Parish, Township, or Place, (*as the Case may be*).

I HEREBY give notice, that *I shall apply for compensation to the justices of the peace at a special petty sessions to be holden at — on the — day of — next, at the hour of — in the forenoon, on account of the damage which I have sustained by means of* [here state the offence, the time and place where it was committed, and the nature and amount of the damage, in the same manner as in the preceding form.] *Given under my hand this — day of — in the year of our Lord —.*
(Signed) A. B.

Imprisonment.

THE term of it is regulated by the amount of the unpaid penalty and costs, by stat. 7 & 8 G. 4. c. 29. § 67., and by stat. 7 & 8 G. 4. c. 30. § 32.; for which, see *Penalties*. And for other offences, &c., see *Punishment*, and both sections at length under that head.

Indictment.

FOR the indictment for embezzlement, see title *Embezzlement*. And for robbing ready-furnished house or lodgings, see *Lodging*.

Infamous Crime.

[For what is deemed so, see *Crime*.]

Interrogatory.

STEALING or injuring interrogatories taken in a cause, declared to be a misdemeanor punishable by transportation, by stat. 7 & 8 G. 4. c. 29. § 21.; for which at length see *Record*.

Ireland.

[See head Scotland, the law being the same as to both countries, and where the sections relating to them are at length.]

Iron.

STEALING iron belonging or fixed to a house, &c. declared to be a felony, by stat. 7 & 8 G. 4. c. 29. § 44.; and for the section itself, see Lead.

Jury.

[See Challenge. Verdict.]

Larceny.

[Same title, 3 Burn's Just. 175.]

BY stat. 7 & 8 G. 4. c. 29. § 2. it is enacted, "That the distinction between grand and petty larceny shall be abolished, and every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny before the commencement of this act; and every court, whose power as to the trial of larceny was before the commencement of this act limited to petty larceny, shall have power to try every case of larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple larceny; and also to try all accessories to such larceny."

For the particular objects of larceny see House. Shop. Manufacture. River and Canal. Wreck. Record. Will. Title Deeds. Cattle. Horses. Deer. Hares and Conies. Dogs, Birds, or Beasts. Fish. Oysters. Mines. Trees and Shrubs. Fences. Wood. Fruit. Vegetables. Fixtures. Lodgers. Servants. Embezzlement. Lead. Robbery. Ships.

For the punishment of larceny, see stat. 7 & 8 G. 4. c. 29. § 3. & 4. title Punishment. By which in every case of a conviction for larceny, or a felony made by that statute punishable as such, the court may order the offender to be transported or imprisoned, and (if a male) to be whipped; and when the sentence is imprisonment, the court may order the addition of hard labour or solitary confinement. See section at length, title Punishment.

Lead.

[See head *Larceny*, 3 *Burn's Just.* 205.]

BY stat. 7 & 8 G. 4. c. 29. § 44. it is enacted, "That if any person shall steal, or rip, cut, or break with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively, fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament; every such offender shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person."

Any glass or woodwork belonging to any building.] This means any window-frames glazed, and being part of the dwelling-house, offices, or erections belonging to any individual, which, being fixed to the freehold, could not be objects of larceny by common law; but this clause does not apply to glass lights, such as hot-bed frames or the like, which are not fixed to the freehold, and the stealing of which was always punishable as larceny.

Utensil or fixture made of metal, &c. respectively fixed in or to any building whatsoever.] This applies to coppers, spouts, cisterns, and the like, fixed in brickwork, which if not so fixed, the taking of them, though amounting to larceny, would not come within this section of the statute.

Metal fixed in any land, being private property.] This would apply to metal pumps, which are closed round on the surface of the earth, though immersed in water below; to lamp-posts, iron pipes for gas, water, and the like.

Or for a fence to any dwelling-house, garden, or area, or in any square, street, &c.] Such as iron palisades, either which surround private houses or public buildings, as colleges, hospitals, or public walks.

It shall not be necessary to allege the same to be the property of any one.] It has been hitherto held in all cases to be essential in indictments, that the things taken be properly laid as to those who have the property in them; but where the things taken are a species of public and intermixed property, such as the iron railing round the plantations in the different squares, the necessity of specifying the property in the individual is dispensed with. The several descriptions of property here mentioned being fixed to the freehold were not objects of larceny by common law, and were first made so by stat. 4 G. 2. c. 32., explained and amended by stat. 21 G. 3. c. 68. Both of which statutes are repealed by stat. 7 & 8 G. 4. c. 27. For the decisions on them, see 3 *Burn's Just.* 206.

Letters.

SENDING letters threatening to charge persons with crimes, in order to extort money, is declared to be felony by stat. 7 & 8 G. 4. c. 29. § 8.; which see at length, post, title *Threats*.

Lien.

PARTIES disposing of property or securities on which they have a lien, are not liable under the embezzlement clause in stat. 7 & 8 G. 4. c. 29. § 50. See section at length, title *Embezzlement*.

Lights.

EXHIBITING false lights or signals to draw ships on shore, or into danger of wreck, is made a capital felony by stat. 7 & 8 G. 4. c. 30. § 11.; which see, title *Ship*.

Lime.

PUTTING lime or other noxious materials into the water, for the purpose of destroying the fish, is declared to be a misdemeanor by stat. 7 & 8 G. 4. c. 30. § 15.; which see at length, title *Fish*.

Limitation of Action.

BY stat. 7 & 8 G. 4. c. 30. § 29. it is enacted, "That the prosecution for every offence punishable on summary conviction under that act, shall be commenced within three calendar months after the commission of the offence, and not otherwise."

And the same is enacted by stat. 7 & 8 G. 4. c. 29. § 64. as to offences punishable by summary convictions under *it*.

The day, therefore, of committing the offence should be correctly set out in the information, as well as the date of the conviction, so that the latter should appear to be made within the period of limitation in all cases of convictions under either statute. See title *Action*.

Locks.

TO destroy or level the locks of canals and navigable rivers is made felony by stat. 7 & 8 G. 4. c. 30. § 12.; which section see at length, title *Banks*.

Lodgings.

[See title *Larceny*, 3 *Burn's Just.* p. 223.]

Stealing goods,
&c. from ready-
furnished
houses or lodg-
ing, made
felony.

BY stat. 7 & 8 G. 4. c. 29. § 45., for the punishment of depredations committed by tenants and lodgers of ready-furnished houses or lodgings, it is enacted, "That if any person shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in every such case of stealing any chattel, it shall be lawful to prefer an indictment in the common form as for larceny; and in every such case of stealing any fixture, to prefer an indictment in the same form as if the offender were not a tenant or lodger: and in either case, to lay the property in the owner or person letting to hire."

Any house or lodging.] The offence of the description mentioned in this statute was, until the passing of it, under stat. 3 & 4 W. & M. c. 9., confined to *lodgings*; this act extends it to ready-furnished *houses*, and makes the offence the same. A ready-furnished house was held not to be within the act 3 W. & M. c. 9. The reason as to stating the contract of letting as is here done, will be found in the number of decisions on that head in 3 *Burn's Just.* 224. which are now dead letter. The former statute against the stealing goods from furnished lodgings, viz. stat. 3 & 4 W. & M. c. 9. § 5., is now repealed by stat. 7 & 8 G. 4. c. 27.

Machinery. (*Destroying or injuring it.*)

[See *Riot*.]

Destroying
machinery be-
longing to the
manufacture
of silk, woollen,
linen, or cotton,

BY stat. 7 & 8 G. 4. c. 30. § 3. it is enacted, "That if any person shall unlawfully and maliciously cut, break, or destroy or damage, with intent to destroy or to render useless, any loom, frame, machine, engine, rack, tackle, or implement, whether fixed or moveable, prepared for or employed in carding, spin-

ning, throwing, weaving, fulling, shearing, or otherwise manufacturing any goods or articles of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work-knitted piece, stocking, hose, or lace respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

felony, punishable with transportation.

This section is confined to cases of injuries to *the machinery* used in those particular manufactures, but by the following section it is extended to all machinery whatever.

Same stat. § 4. enacts, "That if any person shall unlawfully and maliciously cut, break, or destroy or damage, with intent to destroy or to render useless, any *threshing machine, or any machine or engine*, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials, mixed with each other or mixed with any other material, or any frame-work-knitted piece, stocking hose, or lace; (these are articles mentioned above, and injuries to them there made punishable;) every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

To destroy or damage any threshing machine, or any machine or engine used in manufacture, except those above mentioned, declared to be felony punishable by transportation.

For the protection of manufactures, it was necessary to punish the injuring or destroying the machinery used in manufacturing and making them. But the protection is extended to the manufactures themselves, by this section of stat. 7 & 8 G. 4. c. 30., and stat. 7 & 8 G. 4. c. 29. § 16. which see *post*, p. 78. title *Manufacture*.

Riotously pulling down or destroying any machinery used in manufactures, is by § 8. stat. 7 & 8 G. 4. c. 30. made a capital felony. See section, title *Riot*. But the hundred are liable to make good the loss by stat. 7 & 8 G. 4. c. 31. § 2. See *Hundred*.

Maim.

THE maiming of *cattle* is made felony by stat. 7 & 8 G. 4. c. 30. § 16. See section in full, title *Cattle*.

Malice.

BY stat. 7 & 8 G. 4. c. 30. § 25. it is enacted, "That every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable by indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner, in respect of which it shall be committed, or otherwise."

Malt-house.

TO set fire to any malt-house is by stat. 7 & 8 G. 4. c. 30. § 2. made a capital felony; and riotously to demolish or destroy it, punishable in the same way by § 8. of the same statute; and in the last case of such destruction by persons riotously assembled, the hundred is made liable by statute 7 & 8 G. 4. c. 31. § 2. See section in full, title *Burning*.

Manufactures.

[Same head, 3 *Burn's Just.* 305. and same vol. title *Linen*, 260. See *Riot*.]

Destroying silk, woollen, linen, or cotton goods in the loom, &c. or any machinery belonging to those manufactures, &c.

BY stat. 7 & 8 G. 4. c. 30. § 3. it is enacted, "That if any person shall unlawfully and maliciously cut, break, or destroy or damage, with intent to destroy or to render useless, any goods or article of silk, woollen, linen, or cotton, or of any one or more of these materials, mixed with each other or mixed with any other material, or any frame work, knitted piece, stocking hose, or lace respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, or cotton, or any one or more of these materials mixed with each other, or mixed with any other material; or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment." See *Machinery*, *ante*, p. 66.

The punishment for this offence had been capital, but the benefit of clergy was given to it by stat. 4 G. 4. c. 53.; that statute is repealed by stat. 7 & 8 G. 4. c. 27., and the punishment is now as enacted above.

These are cases of injuries to goods in a state of manufacture, which are cut and injured, but are left on the premises; where they are *stolen*, the offence is thus otherwise punished.

Stat. 7 & 8 G. 4. c. 29. § 16. enacts, "That if any person shall steal to the value of ten shillings any goods or article of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress, or manufacture, in any building, field, or other place, every such offender being convicted thereof shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned."

Whilst laid, placed, or exposed, during any stage, progress, or manufacture, in any building, field, or other place.] This clause of the statute is intended to protect goods in progress of manufacture, and which for that purpose are necessarily left exposed, either in open houses, sheds, or on the ground. The practice of robbing bleach-greens was the cause of the first act of parliament, 51 G. 3. c. 41. The present statute, however, extends it to goods in any building or shed, such as paper, leather, and the like, as well as to goods on bleach-greens and open grounds.

Any of the punishments hereinbefore last mentioned.] Those are found in section 14. of this act, and are, "at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not less than four years, and if a male to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Stat. 51 G. 3. c. 41. above referred to, is repealed by stat. 7 & 8 G. 4. c. 27.

Riotously destroying or pulling down any house used in a manufactory is by § 8. stat. 7 & 8 G. 4. c. 30. made a capital felony. See section, title Riot. And for this injury the party may recover full damages against the hundred by stat. 7 & 8 G. 4. c. 31. § 2.

Metal.

STEALING any metal fixture or one which is attached to a building is felony by stat. 7 & 8 G. 4. c. 29. § 44. See, title Lead, section at length.

Mill.

TO set fire wilfully and maliciously to any mill is by stat. 7 & 8 G. 4. c. 30. § 2. made a capital felony, and the riotously demolishing or pulling it down is by § 8. of the same statute declared to be a capital offence also. For the first-mentioned section, see title *Burning*, and for the latter, title *Riot*.

For the riotously demolishing a mill, the party injured may sue the hundred, and recover full compensation by stat. 7 & 8 G. 4. c. 31. § 2. See *Hundred*.

Mine.

[See *Coal Mine*, 1 *Burn's Just.* 521.]

BY stat. 7 & 8 G. 4. c. 30. § 5. it is enacted, "That if any person shall unlawfully and maliciously *set fire to any mine of coals*, or cannel coal, every such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon. See *Burning*. And

Letting water into mines, or obstructing air ways or water ways and the like in mines, declared to be felony.

By § 6. of the same statute it is enacted, "That if any person shall unlawfully and maliciously *cause any water to be conveyed into any mine*, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof, or shall, with the like intent, unlawfully and maliciously pull down, fill up, or obstruct any airway, waterway, drain, pit, level, or shaft of or belonging to any mine, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit) in addition to such imprisonment. Provided always, that this provision shall not extend to any damage committed under ground by any owner of any adjoining mine in working the same, or by any person duly employed in such working."

The two last-mentioned sections apply to the cases of *injuries done to the mines*; but the *stealing of property raised in them* is protected further.

Stealing ore or any substance raised from mines declared to be felony.

Stat. 7 & 8. G. 4. c. 29. § 37. enacts, "That if any person shall *steal*, or *sever with intent to steal*, the ore of any metal, or any *lapis calaminaris*, manganese, or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

The offences against which these sections are directed for injuries to mines, had been made punishable by antecedent statutes, and the hundred made liable to make good the loss: these were stat. 10 G. 2. c. 32., stat. 13 G. 2. c. 21., stat. 9 G. 3. c. 29., and stat. 39 & 40 G. 3. c. 77.; all these are repealed by stat. 7 & 8 G. 4. c. 27. Statutes repealed.

Riotously pulling down or destroying any erection, steam-engine, or machinery used in working and carrying on mines, is by stat. 7 & 8 G. 4. c. 30. made a capital felony. See section under head Riot.

To destroy engines used in working mines is felony. See **Engine**. In both cases of destruction by persons riotously assembled, the hundred is made liable by stat. 7 & 8 G. 4. c. 31. § 2. See **Hundred**.

Minerals.

[See titles **Mine** and **Engine**, stat. 7 & 8 G. 4. c. 29. § 37., and same statute, 7 & 8 G. 4. c. 30. § 7.]

Misdemeanor.

[See **Accessory** and **Punishment**.]

BY stat. 7 & 8 G. 4. c. 29. § 62. of this act it is enacted, "That every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender.

And the same is enacted by stat. 7 & 8 G. 4. c. 30. § 26. as to misdemeanors punishable under it.

Mortgagee.

MORTGAGEE disposing of property mortgaged, is not liable under the embezzlement clause, by stat. 7 & 8 G. 4. c. 29. § 50.; for which see **Embezzlement**.

Note.

NOTE for payment of money. Stealing it is made felony by stat. 7 & 8 G. 4. c. 29. § 5., which see at length in title **Security**.

Nursery.

BY stat. 7 & 8 G. 4. c. 30. § 21. destroying or injuring plants, fruit, or vegetable productions growing in a nursery, is made punishable by fine or by imprisonment; and the second offence is felony. For section at length, see *Garden*.

The same punishment for stealing them by stat. 7 & 8 G. 4. c. 29. § 42.

Dasthouse.

SETTING fire to it is made a capital felony by stat. 7 & 8 G. 4. c. 30. § 2.; which see under head of *Burning*.

Orchard.

STEALING fruit from an orchard is, by stat. 7 & 8 G. 4. c. 29. § 42., made punishable, on summary conviction, by imprisonment or fine; and damaging or destroying it in the same way, by stat. 7 & 8 G. 4. c. 30. § 21. See both in full, title *Garden*.

Order.

ORDER for delivery of goods on payment of money. Stealing such order is made felony, by stat. 7 & 8 G. 4. c. 29. § 5.; which see in full, title *Security*.

Ore.

STEALING ore from the mine. This offence is declared to be felony by § 37. stat. 7 & 8 G. 4. c. 29. See section in full, title *Mine*.

Oysters.

[See head *Fish and Fisheries*, 3 *Burn's Just.* p. 409.]

Stealing oysters
or oyster brood
from beds,
larceny.

BY stat. 7 & 8 G. 4. c. 29. § 36. it is enacted, "That if any person shall steal any oysters or oyster-brood from any oyster-bed, laying, or fishery, being the property of any other

person, and sufficiently marked out or known as such, every such offender shall be deemed guilty of larceny, and, being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and wilfully use any dredge, or any net, instrument or engine whatsoever within the limits of any such oyster fishery, for the purpose of taking oysters or oyster-brood, although none shall be actually taken, or shall, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, every such person shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be punished by fine or imprisonment, or both, as the court shall award; such fine not to exceed twenty pounds, and such imprisonment not to exceed three calendar months; and it shall be sufficient in any indictment or information, to describe, either by name or otherwise, the bed, laying, or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill. Provided always, that nothing herein contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only."

Dredging for oysters on beds, a misdemeanor.

Any oyster-bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known.] All the king's subjects having a right to fish in the open sea, on the shores of which oyster-beds or layings are made, no conviction, therefore, can take place on this section, without distinctly proving the boundary of the bed from which the oysters were taken. But by a subsequent part of this clause, in the information or indictment, it will be sufficient to describe the bed, laying, or fishery in which the offence is committed, *by name or generally*, without stating it to be in any particular parish, township, or vill.

The *stealing* of oysters or oyster-brood, is by the first part of this clause made *larceny*, and properly so, as oysters are brought from other places and laid on the beds to fatten, so that they are moveable property; but the latter part of this clause, that of dredging for oysters, or using any instrument which drags on the ground, and so disturbs and breaks up the laying, is declared to be a misdemeanor only, and the mere act of doing so subjects the party to punishment. It is not necessary that any oysters should be taken; the fact of dredging, however, must be proved to have taken place within the limits of the beds or layings.

Provided always, &c.] This saving clause is rightly introduced, as the fishing for round fish would not disturb the laying, as they are taken swimming, or, as it is termed here, floating; the fishing for flat-fish is, of course, forbidden, if done by dredges, trawls, or any thing that goes on the ground; for though there is no object in doing it to take oysters, the injury to the beds is the same.

The offences punished by this section were before prohibited and punished by stat. 31 G. 3. c. 51., and stat. 48 G. 3. c. 144., both of which are now repealed by stat. 7 & 8 G. 4. c. 27. Statutes repealed.

Pannel.

STEALING, after return, a jury pannel, is declared to be a misdemeanor by stat. 7 & 8 G. 4. c. 29. § 21.; which see at length, title *Record*.

Pardon.

IN cases of a first conviction, the convicting justice may pardon the offender, on making satisfaction to the party aggrieved, at the justice's discretion, by stat. 7 & 8 G. 4. c. 29. § 68., and by stat. 7 & 8 G. 4. c. 30. § 34., for which see title *Conviction*.

And the king may pardon the non-payment of any money forfeited or fined under both those acts, by stat. 7 & 8 G. 4. c. 29. § 69., and stat. 7 & 8 G. 4. c. 30. § 35. See section at length in both cases, title *Conviction*.

But as to the effect and operation of a *King's pardon*, it is enacted by stat. 7 & 8 G. 4. c. 28. § 13., "That where the king's majesty shall be pleased to extend his royal mercy to any offender convicted of any felony punishable with death or otherwise, and by warrant under his royal sign manual, countersigned by one of his principal secretaries of state, shall grant to such offender either a free or a conditional pardon; the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender, as to the felony for which such pardon shall be so granted: provided always, that no free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any felony committed after the granting of any such pardon."

Penalty and Forfeiture.

[See 1 *Burn's Just.* title *Conviction*, p. 601., and same title *ante*.]

Penalties and forfeitures on conviction, how to be applied or apportioned.

THE appropriation of penalties forfeited by the two statutes of the 7 & 8 G. 4. c. 29. § 66., and 7 & 8 G. 4. c. 30. § 32., is the same, and the wording the same, except as relates to the different objects of these statutes. By both of them it is

enacted, with regard to the appropriation of all forfeitures and penalties upon summary convictions under them, "That every sum of money which shall be forfeited, either as the value of the property stolen or taken, or the amount of any injury done (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence; and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such value or amount or otherwise, shall be paid to some one of the overseers of the poor, or to some other officer (as the justice may direct) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate: Provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property or amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only; and the corresponding sum or sums, forfeited by the other offender or offenders, shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied."

Proviso in case of joint convictions.

The stat. 7 & 8 G. 4. c. 30. § 33. does not use the words "for the value of the property stolen," that statute not relating to any property *stolen*, but to such as had been *damaged* or *injured*, so that the words, "the amount of the injury done," apply to it only.

And in order to secure the payment of the several penalties or fines in every case of a conviction, the party convicted is ordered to pay the amount of the penalty on the conviction taking place, either immediately or at a future period, and in case of his refusal to do so, it is enacted by § 67. of stat. 7 & 8 G. 4. c. 29., "That in every case of a summary conviction under this act, where the sum which shall be forfeited for the value of the property stolen or taken, or under stat. 7 & 8 G. 4. c. 30. § 33. for the amount of the injury done, or which (in either case) shall be imposed as a penalty by the justice, shall not be paid either immediately after conviction or within such period as the justice at the time of the conviction shall appoint, it shall be lawful for the convicting justice (unless where otherwise specially directed), to commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two calendar months, when the amount of the sum

If the penalty on conviction is not paid, the justice may commit the party to prison.

Pigeons.

The term of imprisonment, how regulated by the amount of the penalty and costs.

forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs shall not exceed 5*l.*, and for any term not exceeding four calendar months where the amount with costs shall not exceed 10*l.*, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount and costs."

See head *Warrant, post*; and for form of a committal when it is for non-payment of a fine, see title *Warrant*.

Pigeons.

[See title *Game, 2 Burn's Just.* 355.]

BY stat. 7 & 8 G. 4. c. 29. § 33. it is enacted, "That if any person shall unlawfully and wilfully kill, wound, or take any house dove or pigeon, under such circumstances as shall not amount to larceny at common law, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the value of the bird any sum not exceeding two pounds."

Under such circumstances as shall not amount to felony at common law.] Animals *feræ naturæ* are not objects of larceny, but that is while they are suffered to remain at large; but if kept confined, so that the owner may take them at pleasure, they then become objects of larceny. Therefore, whether old pigeons unconfined, except belonging to an open dove cote, would come under this clause so far as to be objects of larceny, appears to be doubtful.

The killing of pigeons with dogs or nets or engines, was prohibited by stat. 1 Jac. 1. c. 27. under a penalty; another act was passed to the same effect, stat. 2 G. 3. c. 29., which contained particular directions respecting convictions on this subject; but both acts are now repealed by stat. 7 & 8 G. 4. c. 27.

Statutes repealed.

Piles.

[In the banks of rivers or canals. See *Banks*.]

CUTTING off or drawing them up, felony by stat. 7 & 8 G. 4. c. 30. § 12. See section at length, title *Banks*.

Pipes.

PIPES of metal fixed in the ground and private property : the stealing or breaking them with intent to steal them, is made felony by stat. 7 & 8 G. 4. c. 29. § 44.; for which section at length, see title **Lead**.

Plantations.

SETTING fire to plantations of trees, coppice, or wood, is made felony, liable to transportation, by stat. 7 & 8 G. 4. c. 30. § 17.; which see at length, titles **Burning** and **Trees**.

Plants.

BY stat. 7 & 8 G. 4. c. 30. § 21. to damage or destroy plants in a garden, &c. makes a party liable, on conviction, to imprisonment or penalty; if growing elsewhere, it is punishable by stat. 7 & 8 G. 4. c. 30. § 22. *To steal* or destroy *with intent to steal* plants, &c., makes the offender liable to imprisonment and hard labour, or penalty and fine, by stat. 7 & 8 G. 4. c. 29. § 42., if stolen from a garden: if growing elsewhere, and not in gardens, &c., the offence is punished by stat. 7 & 8 G. 4. c. 29. § 43. with imprisonment and fine. See the sections at length under the heads of **Garden** and **Vegetables**.

Pleading.

BY stat. 7 & 8 G. 4. c. 28. § 1. it is enacted, "That if any person not having privilege of peerage being arraigned on an indictment for treason, felony, or piracy, shall plead thereto a plea of 'not guilty,' &c., he shall by such plea, without any further form, be deemed to have put himself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly."

If a party plead 'not guilty,' he is at once put on his trial.

And by the same statute, § 2., "If any person being arraigned upon or charged with any indictment or information for treason, felony, piracy, or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of not guilty on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same."

If he stands mute, or will not plead, the plea of 'not guilty,' may be entered for him.

Port or Quay.

STEALING from on board a ship or barge in any port of entry or discharge, is made a transportable offence by stat. 7 & 8 G. 4. c. 29. § 17.; which see at length under title *Ship*.

Potatoes.

STEALING, or damaging and destroying growing potatoes, is made punishable on summary conviction by stat. 7 & 8 G. 4. c. 29. § 43. and by stat. 7 & 8 G. 4. c. 30. § 21. See sections at length, title *Vegetables*.

Pretences (*false*).

OBTAINING money or other property by false pretences, declared to be a misdemeanor, punishable by transportation or otherwise, by stat. 7 & 8 G. 4. c. 29. § 53.; for which see *Theat*.

Process (*to compel Appearance*).

[See *Apprehending. Warrant. Summons.*]

THE process to compel the appearance of the party charged with any offence, is the same under both statutes 7 & 8 G. 4. c. 29. and c. 30.

Persons charged with offences punishable by summary conviction, may be compelled to appear either by summons or warrant, at the justice's discretion.

By stat. 7 & 8 G. 4. c. 30. § 30., reciting that for the more effectual prosecution of all offences punishable on summary conviction under this act, it is enacted, "That where any person shall be charged on the oath of a credible witness before any justice of the peace with any such offence (that is, any offence punishable by summary conviction under that act), the justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode), the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made, may (if he shall so think fit), without any previous summons (unless where otherwise specially directed), issue such

warrant; and the justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case."

Stat. 7 & 8 G. 4. c. 29. § 65., in the same words, enacts the above section, so that the same course or process may be adopted in the prosecution of all *offences punishable by summary conviction* under either of those statutes; and it is left to the discretion of the justice to proceed in the first instance by summons or by warrant. The stat. 7 & 8 G. 4. c. 29. comprises many more offences than stat. 7 & 8 G. 4. c. 30., part punishable as felonies, part as misdemeanors. Where the offence is felony, the justice *ex vi termini* has the power to issue his warrant to apprehend the person charged; but in cases of misdemeanors, the usual course is by summons, unless a power to apprehend is specially given to the justice, as is done here. This power, however, of issuing a warrant in the first instance, should be used with discretion, but should be resorted to in flagrant cases, or where the offender is likely to abscond: it must not be granted without the previous oath of a credible witness, duly taken, which is expressly required by this section.

Upon due proof of the service of the summons upon such person, the justice may either proceed to hear the case ex parte.] This is when the justice has first issued a summons. If the party appears, though the service has not been regular, the irregularity is waived, and the justice may proceed, as has been decided in many cases of similar proceedings, such as under the game laws.

Or issue his warrant for apprehending such person.] If the party has been summoned and does not appear, as the power then to issue a warrant depends on the regularity of the service of the summons, the justice should examine a witness on oath as to the due service of it, and make a record of the evidence, as it should be set out in the conviction.

Where a party is found committing any offence within these statutes, he may be immediately apprehended by an officer, the owner, or his servants. See title *Apprehending*, ante, p. 6.

The stealing or injuring any *process belonging to a court of record* after it has been returned, and is filed or in the care of the proper officer, is by stat. 7 & 8 G. 4. c. 29. § 21. declared to be a misdemeanor. See *Record*.

Pulse.

SETTING fire to any stack of pulse is declared to be a capital felony by stat. 7 & 8 G. 4. c. 30. § 17. For section at large, see *Burning*.

Punishment.

[See Accessary. Receiver. Misdemeanor. Conviction.]

FOR the punishment for particular offences see the different references by name. Under this head are here placed general rules for punishment applicable to the statutes 7 & 8 G. 4. c. 29. and c. 30. taken separately; and

1. Punishment for offences against stat. 7 & 8 G. 4. c. 29. for larceny.

1. *With respect to offences punishable by stat. 7 & 8 G. 4. c. 29. by § 3. it is enacted, "That every person convicted of simple larceny, or of any felony hereby made punishable like simple larceny, shall (except in the cases hereinafter otherwise provided for) be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."*

Punishment for indictable offences under the same statute where imprisonment is awarded.

And by § 4. of the same statute, it is enacted, with regard to the cases where *imprisonment is the punishment for indictable offences* under this act, "That where any person shall be convicted of any felony or misdemeanor, punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet."

The punishments inflicted by these sections must make part of the sentence of the court on the offender when found guilty on an indictment, and inflicted at "the discretion of the court;" these words, therefore, confine it to cases where the offender is convicted upon a *trial*, they therefore give no power to justices out of sessions.

The imprisonment mentioned above, therefore, is where imprisonment is the *punishment for the offence*; but where the imprisonment is the *punishment for non-payment of a penalty on conviction*, the section does not apply; in that case the scale and duration of the imprisonment is settled by stat. 7 & 8 G. 4. c. 29. § 67., and by 7 & 8 G. 4. c. 30. § 33.; which, in cases under both statutes, will be found at length, title *Penalty, ante*, p. 74.

In what cases *punishment may be pardoned*, see title *Pardon and Conviction*.

2. Punishment for indictable offences under stat. 7 & 8 G. 4. c. 30. for which imprisonment is awarded.

2. *With respect to offences against the stat. 7 & 8 G. 4. c. 30. by § 27. it is enacted, "That where any person shall be convicted of any indictable offence, punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of*

such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet."

Shall be convicted of any indictable offence punishable by this act.] The punishment allotted by this section can only be adjudged by the court, and cannot be inflicted by a justice of peace in any case of conviction. The words confine it to *indictable offences* on which the party has been convicted, and ordered to be imprisoned as part of his punishment.

For a first offence on conviction under stat. 7 & 8 G. 4. c. 29. § 68. and 7 & 8 G. 4. c. 30. § 34., the justice may discharge the offender from his conviction under terms. See those sections at length, title *Conviction*.

For the form of committal for punishment for non-payment of a penalty, see *Warrant*, and stat. 7 & 8 G. 4. c. 29. § 67., title *Penalty*.

Quay.

STEALING goods from any wharf or quay is declared to be a transportable offence by stat. 7 & 8 G. 4. c. 29. § 17., which see at length, title *Ship*.

Rails.

TO steal, or break with intent to steal, iron rails fixed in the ground round a dwelling-house, garden, &c., or in a square or public building, is declared to be felony by stat. 7 & 8 G. 4. c. 29. § 44., which see at length, title *Lead*.

Receiver of stolen Property.

[See under title *Accessory*, 1 *Burn's Just.* 13.]

BY stat. 7 & 8 G. 4. c. 29. § 54., it is enacted, with respect to receivers of stolen property, "That if any person shall receive any chattels, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a felony, either at common law, or by virtue of this act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of felony, and may be indicted and convicted, either as an accessory after the fact, or for a substantive felony; and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice: and every such receiver, howsoever convicted, shall be liable, at the discretion of

Receivers of stolen property, which amounts to felony, may be tried either as accessories after the fact, or for a substantive felony, and be liable to be transported, &c.

Receiver of stolen Property.

the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned for any term not exceeding three years; and if a male to be once, twice, or thrice publicly or privately whipped, if the court shall so think fit, in addition to such imprisonment. Provided always, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence."

The stealing or taking whereof shall amount to a felony either at common law, or by virtue of this statute.] No person can be punished under this statute without it being previously established, that the property found in his possession has been stolen or taken feloniously. Where the principal felon has been tried and convicted of such an offence, that would be conclusive: but as the receiver under this clause may be tried, though the principal has not; when that has not taken place, the circumstance of the taking the property should be accurately and fully investigated by the magistrate before he commits the person charged, to see that there was not only a felonious taking of the property with the receiving of which he is charged, but that he had full knowledge that it had been stolen when he received it.

Such receiver may be indicted and convicted, either as an accessory after the fact, or for a substantive felony.] This statute makes the receiving of stolen goods, knowing them to be stolen, a substantive felony, and which may be charged as such in an indictment, and punishable as above stated. Questions were formerly raised as to the apprehension and conviction of the principal; and it had been punishable as a misdemeanor only by stat. 22 G. 3. c. 58., but that has been wisely abandoned, and the punishment is now transportation or imprisonment, the offence being made a felony. This enactment will tend efficiently to the prevention of crime. The facility of disposing of stolen property, and the lenity with which it was punished, encouraged the commission of that crime, which the severity of the punishment here inflicted may deter persons from the commission of. In a moral point of view, he who takes another's property and he who receives and keeps it, knowing it to be another's, are equally guilty. The stat. 22 G. 2. c. 58. is repealed by stat. 7 & 8 G. 4. c. 27.

When it is declared to be a substantive offence, the conviction or apprehending of the principal offender can have no effect on the offence.

In the case of property, the taking of which amounts to an *indictable misdemeanor*, a similar provision has been made by

Stat. 7 & 8 G. 4. c. 29. § 55.; which enacts, "That if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made an *indictable misdemeanor by this act*, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted

When the offence of taking the property is an indictable misdemeanor, the receiver may be prosecuted for a misdemeanor, and liable to be transported.

thereof, or shall or shall not be amenable to justice; and every such receiver shall, on conviction, be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Made an indictable misdemeanor by this act.] A distinction must here be attended to, as to misdemeanors which are punishable by *fine or otherwise only before a justice of the peace*, and not by indictment, though the offence may be stealing property which the receiver has got. There can be no receiver of such stolen property, the stealing or taking of which is not indictable, such as fences, gates, or rails under this statute, § 40.

As to the place where receivers may be tried.] It is enacted, by stat. 7 & 8 G. 4. c. 29. § 56. "That if any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, or converted, every such person, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried, and punished in any county or place in which he shall have, or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished, in the county or place where he actually received such property."

All receivers may be tried where the principal is triable, or where the property is found, as well as where the receiving takes place.

The three last sections apply to cases in which the offence of stealing or taking the property must be tried by indictment, and not by any summary mode of proceeding. In §§ 54. and 55. the punishment is by sentence on conviction, and is directed to be apportioned in such way as the court shall think fit; that, therefore, confines it to trial by jury. The words in § 56. are, "that the offender shall be *indicted, tried, and punished* in any county," &c.; that is, the receiver must be tried by indictment, and the property which he is charged with receiving must be *stolen* property, according to § 54., or property, the taking of which is an *indictable misdemeanor*. Nothing is enacted in them respecting property which had been unlawfully come by, but the offence of taking which was a misdemeanor punishable by summary conviction of the offender: nor was the receiving property so circumstanced liable to punishment. The receiving of property so obtained is, however, now punishable by conviction before a justice, under the 60th section of the same statute, 7 & 8 G. 4. c. 29. That section enacts, "That where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, either for every offence or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof, before a justice of peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to

The receivers of property, the taking of which subjects the offender to conviction as a misdemeanor, punishable by conviction before a justice.

which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this act made liable."

The summary, therefore, of the law against receivers is this : When the goods which he is charged with receiving, have been *feloniously stolen*, and he has received them, knowing them to be so, he *may be indicted for felony*, either for the offence itself, or as an accessory after the fact, and, if convicted, be liable to be transported. Where he receives property or goods which have been stolen, but the stealing of which is not declared to be a felony, such as plants and fruit out of a garden, under stat. 7 & 8 G. 4. c. 29. § 42., or property, the taking of which is by the act declared to be a misdemeanor, but punishable by indictment, such as the case of factors embezzling the goods intrusted to them as such, by stat. 7 & 8 G. 4. c. 29. § 51. he may be *indicted* for a misdemeanor, and punished by transportation ; but a justice of peace has jurisdiction over receivers, only, where the taking of the property is by the statute a misdemeanor punishable only by fine or otherwise on summary conviction ; in such case he may convict the receiver, of the misdemeanor, and punish him as principal.

A great variety of statutes had passed respecting the offence of receiving goods, knowing them to be stolen, which will be found at great length in 1 *Burn's Just.* p. 13. title *Accessory*. These are 3 *W. & M. c.* 9., 5 *Ann. c.* 31., 4 *G. 1. c.* 11., 22 *G. 3. c.* 58., 29 *G. 2. c.* 30., 10 *G. 3. c.* 48.; all of which are repealed by stat. 7 & 8 G. 4. c. 27. The receiving of bonds or securities for money, knowing them to be stolen, was punishable by stat. 2 *G. 2. c.* 25., and 3 *G. 4. c.* 24. Both are now repealed by stat. 7 & 8 G. 4. c. 27.

Records (*stealing or damaging of*).

[See head *Larceny*, 3 *Burn's Just.* 209.]

Stealing records and proceedings in the courts above a misdemeanor, and liable to transportation for seven years.

BY stat. 7 & 8 G. 4. c. 29. § 21., it is enacted, " That if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever of or belonging to any court of record, or relating to any matter civil or criminal, begun, depending, or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever of or belonging to any court of equity, or relating to any cause or matter begun, depending, or terminated in any such court, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment by fine or imprison-

ment, or by both, as the court shall award; and it shall not in any indictment for such offence be necessary to allege that the article in respect of which the offence is committed, is the property of any person, or that the same is of any value."

Take from its place of deposit for the time being, or from the person having the lawful custody thereof.] This means, after the proceedings in any action or suit in equity *have been filed*, until which time they are not properly records; but if any of the documents mentioned are brought into the office to be filed, or have been delivered out of the office for any purpose, to the proper officer, as *e. g.* to be given in evidence on a trial, and while so in his custody and entrusted to him, they are stolen or injured, it is a case within this clause of the statute.

The stealing of the records of the courts above, had been declared to be felony by stat. 8 H. 6. c. 12., which statute is repealed by stat. 7 & 8 G. 4. c. 27., and is now fully re-enacted here; the only legal proceedings mentioned in that act being records or process of any of the courts at *Westminster*, by reason whereof judgment was reversed. But an indictment will lie for stealing some only of those mentioned in this statute by name. See 3 *Burn's Just.* 209.

Statutes repealed.

Restitution of stolen Goods.

[Same head, 5 *Burn's Just.* 12.]

BY stat. 7 & 8 G. 4. c. 29. § 57. it is enacted, "That to encourage the prosecution of offenders, if any person guilty of any such felony or misdemeanour as aforesaid, in stealing, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, *shall be indicted* for any such offence, by or on behalf of the owner of the property or his executor or administrator, and convicted thereof; in such case, the property shall be restored to the owner or his representative, and the court before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner: Provided always, that if it shall appear before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate, liable to the payment thereof, or being a negotiable instrument, shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen, taken, obtained, or converted as aforesaid, in such case the court shall not award or order the restitution of such security."

The owner of stolen property prosecuting the thief to conviction shall have restitution of his property.

Exception.

Reward for stolen Goods.

The property shall be restored to the owner or his representative.] That is, on the conviction taking place of the party who stole it; and that is so ordered by this clause, though the party in taking it was guilty of a misdemeanor only. In this respect the law is properly altered, as the owner was entitled to have his property restored on a conviction for felony only, and not for a misdemeanor, before this act passed.

Or to order the restitution thereof in a summary way.] This authorizes the judge before whom the prisoner has been tried and convicted, where the stolen property has been produced at the trial, to order it to be delivered up to the owner; where it has not been produced, the owner must have a writ of restitution.

Provided always.] This exception, which is applied to *valuable securities* only, such as bill notes, bills of lading, or the like, which are negotiable and payable to the holder, is meant for the protection of persons who were liable to pay them. Where the prisoner is indicted for stealing such property, and the party or parties who were liable to pay such securities have *bond fide* discharged them, or parties have taken them in payment *bond fide*, and without notice or cause of suspicion; such are not to be restored to the owners, as the effect of this might be to make them be paid twice, and this clause is meant to protect negotiable securities.

Statutes repealed.

The restitution of stolen goods had been provided by two ancient statutes, 21 *H. 8. c. 11.*, and 31 *Eliz. c. 52.* Both now repealed by stat. 7 & 8 *G. 4. c. 27.*, and see 5 *Burn's Just.* 83. Where there is no prosecution, in what cases there shall be no restitution.

Reward for Recovery of stolen Goods.

[See same head, title *Larceny*, 3 *Burn's Just.* 227.]

Taking a reward for helping to the recovery of stolen property, felony.

BY stat. 7 & 8 *G. 4. c. 29. § 58.* it is enacted, "That every person who shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanour have been stolen, taken, obtained, or converted as aforesaid, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

This offence was prohibited by stat. 4 G. 1. c. 11., now repealed by stat. 7 & 8 G. 4. c. 27. The words in that act applied to goods and chattels only: this section is more comprehensive, and applies to stolen property of every description.

As it is necessary to deter persons from compounding felonies, and by taking back stolen property, suffering persons guilty to escape by forbearing to prosecute, by stat. 7 & 8 G. 4. c. 29. § 59. it is enacted, "That if any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any enquiry after the person producing such property; or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property; or if any person shall print or publish any such advertisement, in any of the above cases every such person shall forfeit the sum of fifty pounds for every such offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit."

Shall forfeit the sum of 50l.] This is the only section in this statute which gives a penalty recoverable by action; as for the breach of any part of it the party is subjected to a penalty of 50l., at the suit of a common informer, and he may recover the same in an action of debt, with full costs of suit.

This was declared to be an offence by stat. 25 G. 2. c. 56.; which statute is now repealed by stat. 7 & 8 G. 4. c. 27.

Advertising a reward for the recovery of stolen goods subjects a party to a penalty of 50l.

Riot.

[See Church, House, Machinery, Manufacture, Mine. See head of Burning.]

[Same head, 5 Burn's Just. 14.]

BY stat. 7 & 8 G. 4. c. 30. § 8. it is enacted, "That if any persons riotously and tumultuously assembling together, to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of England and Ireland, duly registered or recorded; or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary; or any building

Rioters demolishing, &c. a church, house, or building, and machinery, or mine, or manufactures, are guilty of felony.

Robbery.

or erection used in carrying on any trade or manufacture, or any branch thereof; or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof; or any steam-engine or other engine, for sinking, draining, or working any mine, or any staith, building, or erection, used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine; every such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon."

The offences prohibited and punished by this section of the statute had been so by many former statutes; such as churches and chapels by stat. 1 G. 1. st. 2. c. 5.; houses, mills, and out-offices by stat. 41 G. 3. c. 24.; engines, &c. used in manufactories by stat. 52 G. 3. c. 130. and 57 G. 3. c. 19.

Statutes repealed.

All which statutes are repealed by stat. 7 & 8 G. 4. c. 27., and the substance embodied into this clause.

For what injuries to property riotously committed, the hundred are liable by stat. 7 & 8 G. 4. c. 3. § 2. See *Hundred*.

River.

STEALING goods from ship or barge in any navigable river is declared to be a transportable offence by stat. 7 & 8 G. 4. c. 29. § 17., which see, title *Ship*.

By stat. 7 & 8 G. 4. c. 30. § 12. to break down the bank, flood-gate, or work, on any navigable river, is declared to be felony, for which see *Banks*.

Robbery.

[See *Larceny*. *Robbery*.]

[Same head, 5 *Burn's Just.* 68.]

BY stat. 7 & 8 G. 4. c. 29. § 6. it is enacted, "That if any person shall *rob* any other person of any chattel, money, or valuable security, every such offender, being convicted thereof, shall suffer death as a felon; and if any person shall *steal* any such property from the person of another, or shall assault any other person with intent to rob him, or shall, with menaces or by force, demand any such property of any other person, with intent to steal the same, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

There are four offences contained in this section, which should be distinguished: 1st, Robbery from the person; that is, taking

Robbery from the person a capital felony. Stealing from the person, assaulting with intent to rob, or obtaining money by threats, felony, with transportation for life.

from the person by force, and accompanied with fear, any of the description of the property mentioned. This is properly termed robbery, and is declared to be capital. 2dly, Stealing from the person. This is when done secretly, and without causing any fear to the party robbed: of this description would be picking pockets. 3dly, Assaulting any person with intent to rob. This offence is complete, though the offender takes nothing. And, 4thly, Demanding money or other property from any person, accompanied with threats and menaces, or with force, with a view of taking such property; and this offence is complete, though nothing is obtained by it,—which three last offences are punishable by transportation. But to the last of these there is this exception, that if the threats used are to accuse the party of an infamous crime, and by such means money or property is obtained, it then becomes a robbery, and punishable accordingly. It is by the same statute, 7 & 8 G. 4. c. 29. § 7. enacted, “That if any person shall accuse, or threaten to accuse, any other person of any infamous crime, as hereinafter defined, with a view or intent to extort or gain from him, and shall, by intimidating him by such accusations or threats, extort or gain from him any chattel, money, or valuable security, every such offender shall be guilty of robbery, and punished accordingly.”

Any infamous crime, as hereinafter defined.] What is deemed an infamous crime is the subject of section 9. of the statute, and will be found under the head *Crime*, ante, p. 28.

And shall by intimidating him, &c. extort or gain from him any chattel, money, or valuable security.] To constitute the offence under this section of the statute, money or other valuable property must be actually obtained; if threats are used, but no money or other property obtained by such means, the offence comes under the preceding section, and is punishable by transportation or imprisonment, &c.; but if the money, &c. is actually obtained, it then comes under this section, and is a capital offence.

Such offender shall be guilty of robbery, and punished accordingly.] That is capitally, such being the punishment of robbery by stat. 7 & 8 G. 4. c. 29. § 6., ante, p. 88.

Some of the offences enumerated in § 7. of this statute 7 & 8 G. 4. c. 29. had been prohibited and punished by former statutes. Robbery was an offence at common law, but larceny from the person was prohibited and punished by stat. 48 G. 3. c. 129. (see 3 *Burn's Just.* 217.); which statute is now repealed by stat. 7 & 8 G. 4. c. 27.: assaulting with intent to rob by stat. 7 G. 2. c. 21., which is not repealed.

Statute repealed.

Sacrilege.

BY stat. 7 & 8 G. 4. c. 29. § 10. this is made a capital offence. See title *Church*, ante, p. 21.

Scotland.

BY stat. 7 & 8 G. 4. c. 30. § 42. it is declared, "That nothing in that act shall extend to *Scotland* or *Ireland*." And by stat. 7 & 8 G. 4. c. 29. § 76. it is enacted, "That nothing in this act contained shall extend to *Scotland* or *Ireland*, except as follows: that is to say, that if any person having stolen or otherwise feloniously taken any chattel, money, valuable security, or other property whatsoever, in any one part of the United Kingdom, shall afterwards have the same property in his possession in any other part of the United Kingdom, he may be dealt with, indicted, tried, and punished for larceny or theft, in that part of the United Kingdom where he shall so have such property, in the same manner as if he had actually stolen or taken it in that part; and if any person in any one part of the United Kingdom shall receive or have any chattel, money, valuable security, or other property whatsoever, which shall have been stolen or otherwise feloniously taken in any other part of the United Kingdom, such person knowing the said property to have been stolen or otherwise feloniously taken, he may be dealt with, indicted, tried, and punished for such offence, in that part of the United Kingdom where he shall so receive or have the said property, in the same manner as if it had been originally stolen or taken in that part."

As to stat. 7 & 8 G. 4. c. 28. § 16. *that* statute is declared not to extend to *Ireland* or *Scotland*.

Sea.

[See *Banks*.]

BY stat. 7 & 8 G. 4. c. 29. § 77. it is enacted, "That where any felony or misdemeanor punishable under this act shall be committed within the jurisdiction of the admiralty of *England*, the same shall be dealt with, tried, and determined in the same manner as any other felony or misdemeanour committed within that jurisdiction."

Search Warrant,

MAY be granted upon good grounds of suspicion, proved on oath, that any person has in his possession property the having of which is an offence under stat. 7 & 8 G. 4. c. 29., by § 63. of that statute, and to search for venison by stat. 7 & 8 G. 4. c. 29. § 27. See title *Deer*, *Trees*, and *Warrant*.

Securities (*Valuable*).

[Under title *Larceny*, 3 *Burn's Just.* 209.]

SECURITIES for money or value, are what in law are deemed choses in action, and were not objects of larceny, which was confined to goods and chattels. They had, however, been declared to be so by different statutes, and they are now by this statute termed *valuable securities*, and designated by such name, are to be so described in laying the offence of stealing them. They are thus enumerated in stat. 7 & 8 G. 4. c. 29.; and by § 5. it is thus enacted, "That if any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this kingdom, or of *Great Britain*, or of *Ireland*, or of any foreign state, or in any fund of any body corporate, company, or society, or to any deposit in any savings bank; or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money, or for payment of money, whether of this kingdom or of any foreign state; or shall steal any warrant or order for the delivery or transfer of any goods or valuable things; every such offender shall be deemed guilty of felony, of the same nature, and in the same degree, and punishable in the same manner as if he had stolen any chattel of like value, with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen, or secured thereby, and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in the warrant or order; and each of the several documents hereinbefore enumerated shall throughout this act be deemed, for every purpose, to be included under and denoted by the words 'valuable security.'"

Denoted by the words valuable security.] The depositions under this head, and the form of the committal, should be, *e. g.* "for feloniously stealing a certain valuable security of the value of ——*l.*, to wit, a certain bond of one *A. B.* for the payment of that sum, and which said bond was made to *C. D.*, and is now unpaid by the said *A. B.* to the said *C. D.*"

The stealing of the several matters mentioned in this section had been declared to be felony by stat. 2 G. 2. c. 25., and 9 G. 2. c. 18., which statutes are repealed by stat. 7 & 8 G. 4. c. 27. See 3 *Burn's Just.* 209.

What instruments come under the description of valuable securities, to steal which is felony.

Statutes repealed.

Servants.

[See title *Larceny by Servants*, 3 *Burn's Just.* 182.]

Clerks and servants stealing their master's property, how punishable.

BY stat. 7 & 8 G. 4. c. 29. § 46. it is enacted, "That for the punishment of depredations committed by clerks and servants, in cases not punishable capitally, if any clerk or servant shall steal any chattel, money, or valuable security, belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned for any term not exceeding three years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

This offence was punishable by stat. 21 H. 8. c. 7., which exempted from liability for the offence, apprentices and servants not of the age of eighteen, but which statute is now repealed by stat. 7 & 8 G. 4. c. 27.; and in this no such exemption is found.

For the punishment for embezzling their masters' property, see *Embezzlement*.

Sheep.

[See *Cattle*.]

STEALING sheep, or killing them to steal their carcass, skin, or any part of them, is declared to be a felony by stat. 7 & 8 G. 4. c. 29. § 25.; and *maiming or wounding* them a felony also, by stat. 7 & 8 G. 4. c. 30. § 16. For both sections in full, see title *Cattle*.

Ship.

[Same head, 5 *Burn's Just.* 225.]

Setting fire to ships.

THE *setting fire or destroying any ship or vessel, or casting her away*, is felony by stat. 7 & 8 G. 4. c. 30. § 9., for which at length, see head of *Burning*.

Maliciously damaging any ship not by fire, is a felony,

As to other injuries done to shipping, provision is made as follows: by stat. 7 & 8 G. 4. c. 30. § 10. it is enacted, "That if any person shall unlawfully and maliciously *damage* (otherwise

than by fire) any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same, or to render the same useless, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Otherwise than by fire.] The setting fire to a ship having been made felony by the preceding section, stat. 7 & 8 G. 4. c. 30. § 9.

And by § 11. of the same statute it is enacted, "That if any person shall *exhibit any false light or signal*, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress, or destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, or shall by force prevent or impede any person endeavouring to save his life from such ship or vessel (whether he shall be on board or shall have quitted the same), every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

This offence was made a capital felony by stat. 26 G. 2. c. 29. It is now so far repealed by stat. 7 & 8 G. 4. c. 27.

And by stat. 7 & 8 G. 4. c. 29. § 17. it is enacted, "That if any person shall steal any goods or merchandize in any vessel, barge, or boat of any description whatever, in any port of entry or discharge, or upon any navigable river or canal, or shall steal any goods or merchandize from any dock, wharf, or quay adjacent to any such port, river, canal, or creek, every such offender, being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned."

Shall be liable to any of the punishments which the court may award as hereinbefore last mentioned.] The last specific punishment mentioned in the preceding sections, is in section 14. of the act, and is transportation for a term not less than seven years, or to be imprisoned for a term not exceeding four, with the addition of whipping, as in the other sections.

The commission of injuries to ships, against which these sections of the statute enacts, was prohibited by the former statutes, namely, stat. 43 G. 3. c. 113., 12 Ann. st. 2. c. 18., 24 G. 2. c. 45., and 6th section of stat. 33 G. 3. c. 67.; all of which are repealed by stat. 7 & 8 G. 4. c. 27. By the former statute the property taken must have amounted to 40s.; but in this act there is no limitation.

The benefit of clergy was given in this offence by stat. 4 G. 4. c. 53. That statute is now repealed by stat. 7 & 8 G. 4. c. 27., and the punishment declared to be as above.

For the further injuries to ships, see head *Wreck*.

liable to transportation for seven years, or a lesser punishment.

Showing false lights to draw ships on shore, or to do any thing by which they may be lost or endangered, or to prevent any assistance to them, made a capital felony.

Stealing goods from a ship or barge in port, river, or canal, liable to any of the former punishments.

Shop or Warehouse (*Stealing from*).

[See head *Larceny*, 3 *Burn's Just.* 221.]

Robbery in a shop or warehouse, how punishable.

BY stat. 7 & 8 G. 4. c. 29. § 15. it is enacted, "That if any person shall *break and enter* any *shop, warehouse, or counting-house*, and steal therein any chattel, money, or valuable security, every such offender, being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned."

The benefit of clergy had been given in this offence by stat. 4 G. 4. c. 53.; it was repealed by stat. 7 & 8 G. 4. c. 27., and the punishment directed the same as here in all such cases. This forms the fourth description of offence of larceny connected with the house. The first was burglary by § 11.; 2d, house-breaking and larceny in the *dwelling-house* by § 12.; 3d, the same in out-houses or offices connected with the dwelling-house by § 14., and the present, which has no connection with the dwelling-house, being a shop or warehouse, whether detached or connected with it or not.

Liable to any of the punishments before last mentioned.] These are those mentioned in § 14., which is that referred to, and is transportation for life, or for any term not less than seven years, or imprisonment for a term not exceeding four, with whipping, if the court think fit. See § 14. at length, under title *House*.

The offence under this section is not what is termed *shop-lifting*, and which was an offence under stat. 10 & 11 W. 3. c. 23. That was an offence, though the shop was not broken, which is necessary here to constitute the offence. It should seem, however, that the decision under that statute (see 3 *Burn's Just.* 222.), which decides that the goods or property stolen should be such goods as are kept and sold in such shop or warehouse, would be held to be the law under this statute. By stat. 7 & 8 G. 4. c. 30. § 3., to break and enter any house or shop with intent to cut or destroy the manufactures there carrying on, is declared to be felony; which section, see title *Machinery*.

The hundred is made liable to damages to the owner, if a shop is riotously damaged or destroyed, by stat. 7 & 8 G. 4. c. 31. § 2. See *Hundred*.

Shrubs.

STEALING shrubs is made felony, by stat. 7 & 8 G. 4. c. 29. § 38.; which see at length, under head *Trees*.

Damaging and destroying them is felony also, by stat. 7 & 8 G. 4. c. 30. § 19.; which see at length, under head *Trees*.

Signal.

BY stat. 7 & 8 G. 4. c. 30. § 11. exhibiting false signals, with intent to bring ships into danger, is made a capital felony. See title *Ship*.

Silk Goods.

BY stat. 7 & 8 G. 4. c. 30. § 3. to destroy or damage any silk goods or articles of silk, or any warp or shute of silk, or any machine or loom for manufacturing it, is declared to be felony, and punishable by transportation. See section at length, title *Manufacture*.

Snares.

SETTING snares for hares or conies, how punishable. See *Conies*. — Setting them for deer, see *Deer*.

Solitary Confinement.

BY stat. 7 & 8 G. 4. c. 28. § 9. where imprisonment is the punishment for any offence, the court may order the offender the additional punishment of solitary confinement, for the whole or any portion of the time of his imprisonment.

Stacks.

SETTING fire to any stack of corn, grain, pulse, straw, hay, or wood, is declared to be felony by stat. 7 & 8 G. 4. c. 30. § 17. See it at length, title *Burning*.

Statute.

A GENERAL rule for the construction of statutes relating to offences punishable by indictment or conviction, is enacted by stat. 7 & 8 G. 4. c. 28. § 14., viz. "That wherever this or any other statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence, or the subject-matter on or with respect to which it shall be committed, or the offender, or the party affected or intended to be affected by the offence, hath used or shall use words importing the singular number or the masculine gender only, yet the statute shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there is something in the subject or context repugnant to such construction; and wherever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved."

Stile.

BREAKING down, cutting down, or in anywise destroying a stile, is made punishable on conviction by fine, under stat. 7 & 8 G. 4. c. 30. § 23.; which see in full, title *Fence*.

Stocks.

[See *Funds*.]

STEALING any dividend warrant, order for payment, or security for money in the stocks, is made felony by stat. 7 & 8 G. 4. c. 29. § 5.; which see at length, under head *Security*.

Stolen Goods.

IN what case the owner of stolen goods is entitled to have them restored on conviction. See head *Restitution*, ante, p. 85.
Taking a reward for the recovery of stolen goods, or advertising such, punishable by stat. 7 & 8 G. 4. c. 29. §§ 58, 59.

See both sections at length, title **Return**. And in all cases of stolen property punishable under stat. 7 & 8 G. 4. c. 29., by § 63. of that statute the justice may, on good grounds of suspicion, grant a warrant to search for such property, and any person to whom stolen property is offered to be sold, pawned, or delivered, may stop the party and the property if he suspect it to be stolen on reasonable suspicion. See section at length, title **Warrant**.

Summons.

IN what cases of summary convictions a summons may issue or be dispensed with, by stat. 7 & 8 G. 4. c. 29. § 65., and by stat. 7 & 8 G. 4. c. 30. § 30., see both sections under head **Process**.

Suspected Persons.

BY stat. 7 & 8 G. 4. c. 29. § 41., any tree, sapling, shrub, or underwood, or any part of a live or dead fence, or any post, pale, rail, stile, or gate, of the value of 2s., found in the possession of a suspected person by virtue of a search-warrant, and not satisfactorily accounted for, subjects the party to a penalty not exceeding 2l. above the value of the property found. For section at large, see **Wood**.

Tally.

STEALING any tally or other such security for money, is made felony by stat. 7 & 8 G. 4. c. 29. § 5. See section in full, title **Security**.

Tenant.

STEALING property from ready-furnished houses or lodgings by tenants or lodgers, is made felony by stat. 7 & 8 G. 4. c. 29. § 45.; for which section, see title **Lodging**.

Threats.

[See head **Letters** (*threatening*), 3 *Burn's Just.* 241.]

TAKING or demanding money or valuable property from the person by the means or influence of threats, is declared to be a felony, by stat. 7 & 8 G. 4. c. 29. § 6.; and by § 7. of the same statute, to obtain money by threatening to accuse a party of an infamous crime is declared to be robbery, and punishable with death. See both sections at length under head **Robbery**.

Sending threatening letters with a view to extort money, is declared to be a felony, punishable with transportation.

But threats by *means of letters* is further declared punishable, by stat. 7 & 8 G. 4. c. 29. § 8.: it enacts, "That if any person shall knowingly send or deliver any letter or writing, demanding of any person, with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security, or if any person shall accuse or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with death, transportation, or pillory, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime, as hereinafter defined, with a view or intent to extort or gain from such person any chattel, money, or valuable security, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

Without any reasonable or probable cause.] But if a party, supposing that property was withheld from him unjustly by another, to which, through mistake only, he supposed he had a right, it should seem that it would not be an offence within this clause of the statute, if he wrote a letter, threatening proceedings which might affect either the property or character of the party charged with such supposed injustice.

Accuse any person of any crime punishable by law with death, transportation, &c.] But merely threatening to expose a person for some unjust or oppressive proceeding, or some irregularity of conduct not cognizable or punishable in the courts at law, though it might be libellous, would not make the party liable under this section of the act; it must be some crime attended with legal punishment, as stated in the section.

Or of any infamous crime, as hereinafter defined.] The words "hereinafter defined" refer to § 9. of stat. 7 & 8 G. 4. c. 29., where the meaning of the term infamous crime is explained; and the words of that section will be found at length under the head of **Crime**.

Statutes repealed.

The offences against which this section is directed, were prohibited and punished by former statutes, viz. stat. 9 G. 1. c. 22., 30 G. 2. c. 24., 52 G. 3. c. 64., which are now repealed by stat.

7 & 8 G. 4. c. 27. But stat. 27 G. 2. c. 15. is not repealed, as it respects merely sending threatening letters, but demanding nothing valuable. The offence, therefore, of sending such letters remains punishable by that statute, which see, 3 *Burn's Just.* 341.

Threshing Machine.

BY stat. 7 & 8 G. 4. c. 30. § 4., to break or destroy any threshing machine is made felony with transportation, for which see the section at length, title *Machinery*.

Title Deeds (*Stealing*).

BY stat. 7 & 8 G. 4. c. 29. § 23. it is enacted, "That if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned; and in any indictment for such offence it shall be sufficient to allege the thing stolen to be evidence of the title, or of part of the title of the person, or of some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate, or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value."

Stealing the title or other deeds belonging to real estates, declared to be a misdemeanor, and how to be punished.

Evidence of the title or part of the title to any real estate.] It should therefore seem from this, that stealing *leases* for terms of years, or deeds of such inferior value, would not come under this head of the statute.

Liable to any of the punishments which the court may award as hereinbefore last mentioned.] This reference is to the punishment for stealing records, in § 21. of this statute, *ante*, title *Records*, viz. transportation beyond the seas for seven years, or such other punishment, by fine and imprisonment, as the court shall award.

But further, it is enacted, by stat. 7 & 8 G. 4. c. 29. § 24., "That nothing in this act contained, relating to either of the misdemeanors aforesaid (that is, the stealing of title deeds or wills), nor any proceeding, conviction, or judgment to be had or taken thereupon, shall prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any such offence might or would have had, if this act had not been passed; but nevertheless the conviction of any such of-

Conviction for stealing not to affect the party's proceedings at law or in equity, but not receivable in evidence in any action at

law or suit in equity.

fender shall not be received in evidence in any action at law or suit in equity against him; and no person shall be liable to be convicted of either of the misdemeanors aforesaid, by any evidence whatever, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence have disclosed such act, on oath, in consequence of any compulsory process of any court of law or equity in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any commissioners of bankrupt. See *ante*, title *Evidence*.

Toll-house.

THROWING down or destroying toll-houses near turnpike gates is declared to be a misdemeanor by stat. 7 & 8 G. 4. c. 30. § 14. See *Turnpike*.

Trade.

TO set fire to any building used for carrying on trade or manufacture, is made a capital felony, by stat. 7 & 8 G. 4. c. 30. § 2., and riotously to demolish or destroy such a house a capital felony, by § 8. of the same statute; and for injuries so committed by riot the hundred is made liable, by stat. 7 & 8 G. 4. c. 31. § 2. See *Burning, Riot, and Hundred*.

Trees.

[Title *Wood*, 5 *Burn's Just.* 566.]

Stealing trees, shrubs, &c. growing in certain situations, as parks, pleasure-grounds, or near houses, above 1*l.* value, felony.

BY stat. 7 & 8 G. 4. c. 29., § 38., it is enacted, "That if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage, *with intent to steal*, the whole or any part of any tree, sapling, or shrub, or any underwood respectively growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, every such offender (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of one pound,) shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage, with intent to steal, the whole or any part of any tree, sapling, or shrub, or any under-

wood respectively growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of 5*l.*) shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

By the following section of this act (§ 39.) the stealing or destroying trees, &c. of less value is provided against: it enacts, "That if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage, with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, *wheresoever the same may be respectively growing*, the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least, every such offender, being convicted before a justice of the peace, shall for the first offence forfeit and pay, over and above the value of the article or articles stolen, or the amount of the injury done, such sum of money, not exceeding five pounds, as to the justice shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall for such second offence be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such second conviction shall take place before two justices, they may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction; and if any person so twice convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

Stealing the same in other places of 5*l.* value, is also felony.

Stealing trees, shrubs, underwood, &c. wheresoever growing, how punished.

The distinction of these sections should be attended to, as necessary to enable the justice to carry them into execution. The stealing or destroying trees and shrubs is in two cases felony; 1. If growing near a dwelling-house, or in any park, beyond 1*l.* in value. 2. In open grounds or paddocks, beyond 5*l.*, for these the offender must be committed to gaol, and prosecuted by indictment. But, thirdly, stealing or destroying trees or shrubs *any where* of any value above 1*s.* is punishable by conviction before a justice of peace. This last offence was properly so made punishable, as otherwise offenders might steal or destroy to an extent short of 1*l.* in one case, and of 5*l.* in the other, with impunity.

The stat. 7 & 8 G. 4. c. 29., just quoted, applies to cases of stealing, or damaging with intent to steal, any trees, shrubs, &c. But where the injury is the cutting, breaking, or barking them, or doing such injuries as amount to wilful hurt and mischief only, but without any intention of stealing, that is provided for by stat. 7 & 8 G. 4. c. 30.; in which it is enacted in § 19, "That if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, respectively

growing in any *park, pleasure-ground, garden, orchard, or avenue*, or in any ground adjoining or belonging to any dwelling-house, every such offender (in case the amount of the injury done shall exceed the sum of one pound) shall be *guilty of felony*, and, being convicted thereof, shall be liable, at the discretion of the court, *to be transported* beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment; and if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, respectively *growing elsewhere than* in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed the sum of five pounds) shall be guilty of felony, and, being convicted thereof, shall be liable to any of the punishments which the court may award for the felony hereinbefore last mentioned."

And to the same effect it is enacted by the following section of that act, § 20. "That if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, *wheresoever the same may be respectively growing*; the injury done being to the amount of one shilling at the least, every such offender, being convicted before a justice of the peace, shall, for the first offence, forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding five pounds, as to the justice shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall, for such second offence, be committed to the common gaol or house of correction, there to be kept to hard labour, for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such second conviction shall take place before two justices, they may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction; and if any person so twice convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and, being convicted thereof, shall be liable to any of the punishments which the court may award for the felony hereinbefore last mentioned."

The offences under this statute are distinguished, as in those of stat. 7 & 8 G. 4. c. 29. before cited, by the places where committed, and the punishments are nearly the same.

The value of the articles stolen or taken, or the amount of the injury done, shall exceed, &c.] In putting both statutes in force, the places in which the trees, shrubs, &c. were growing, the stealing or damaging of which is complained of, is to be attended to by the justice before whom the complaint is made, as well as the value of them. The first of these, that is, trees, &c. which are growing in any park, pleasure-ground, garden,

orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, such trees being useful as well as ornamental, the stealing of them is more severely punished, for if the value of the trees stolen, or the amount of the injury done, amounts to 1*l.*, it is felony, punishable as simple larceny. But, secondly, if the trees, shrubs, &c. are not growing in such situations, the value of the article taken, or of the amount of the injury done, must amount to 5*l.* to make the offence felony. In estimating in both cases the amount of these sums, which the statute mentions, that is, the actual value of the things stolen and taken, or the amount of injury done to the complainant's property, the justice, it should seem, may examine witnesses as to both, and the mode as well as right to ascertain them seems to be left to his discretion. As to the third description of trees, shrubs, &c., the stealing or injuring of which is made punishable, they are such as are growing in hedgerows, paddocks, or any underwood or open ground; of these the damage can be little more than the bare value; a power is therefore given to the justice to fine the offender.

For the protection of plantations and woods many acts of parliament were in force: they are collected under title *Wood*, 5 *Burn's Just.*, viz. stat. 32 *H. 8. c. 6.*, 35 *H. 8. c. 17.*, 43 *Eliz. c. 7.*, 15 *Car. 2. c. 2.*, 22 & 23 *Car. 2. c. 7.*, 1 *G. 1. c. 48.*, 6 *G. 1. c. 16.*, 9 *G. 1. c. 22.*, 29 *G. 2. c. 36.*, 31 *G. 2. c. 35.*, 4 *G. 3. c. 31.*, 6 *G. 3. c. 36.*, 6 *G. 3. c. 48.*, 9 *G. 3. c. 41.*, 45 *G. 3. c. 66.*, all of which are now repealed by stat. 7 & 8 *G. 4. c. 57.*, and all distinction as to punishment and distinctions of offence abolished, by the clear and simple legislation of these statutes of 7 & 8 *G. 4. c. 29. & 30.*

Trespass.

[See same head, 5 *Burn's Just.* 643., and *Chetwynd's Supplement*, p. 557.]

BY stat. 7 & 8 *G. 4. c. 30.* § 24. it is enacted, "That if any person shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money as shall appear to the justice to be a reasonable compensation for the damage, injury, or spoil so committed, not exceeding the sum of five pounds; which sum of money shall, in the case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence; and in such case, or in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a justice of the peace under this act is hereinafter directed to be applied; and if such sum of money, together with costs (if ordered), shall not be paid

Wilful and malicious trespass to real or personal property, how punished.

either immediately after the conviction, or within such period as the justice shall at the time of the conviction appoint, the justice may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, as the justice shall think fit, for any term not exceeding two calendar months, unless such sum and costs be sooner paid: provided always, that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as before the passing of this act."

Wilfully and maliciously commit any damage, injury, or spoil.] This section has for its object the punishment of those injuries which were prohibited and punished by what was called the small trespass act, the stat. 1 G. 4. c. 56., and by two other statutes, namely, 6 G. 4. c. 127. and 7 G. 4. c. 69., which three acts are repealed by 7 & 8 G. 4. c. 27. It is essential to the offence that it is done wilfully or maliciously; an injury, therefore, done to the land by going over it in pursuit of stray cattle, or by mistake, as supposing that there was a footpath over it, would not come under this section of the statute; cases under similar circumstances are guarded against by the proviso in this section, to which refer.

To or upon any real or personal property whatsoever, either of a public or private nature.] The stat. 1 G. 4. c. 56., from whence this section is taken, enumerates the injuries for which a party is liable to be convicted, when done to real or personal property. It was, however, conceived, that that act was passed with a view to give a summary remedy for trespasses only, connected with the land, which were of such limited extent that the damage would not amount to 40s., in which cases the plaintiffs could recover no costs, the trespasses being connected with the freehold. This construction, however, seems to be too narrow, and not warranted by the words of the act; for the recital of that act is, "for the summary punishment of persons wilfully or maliciously damaging or committing trespasses on public or private property;" and it gives a summary mode of repressing and obtaining satisfaction for damages done to buildings, fences, lands, growing crops (all of which partake of the realty), and other real or personal property." From the word *trespass* being used in this act, it should seem that the legislature intended to extend it to all cases in which an action of trespass could be maintained at common law. That action could be maintained for any injury to mere chattels, or malicious injuries, such as poisoning or destroying a party's fowls, and the like. It should, therefore, seem to be a sound construction of this statute, that a party guilty of such injuries as last mentioned, could legally be convicted under this section of it; and, in fact, unless this construction takes place, there will be nothing to satisfy the words "trespasses to personal property," which are used in this section of stat. 7 & 8 G. 4. c. 30.

In which no remedy is hereinbefore provided.] These words fortify the construction just contended for, and that this section was meant to extend to all injuries to property whatever of a limited extent; for in the preceding clauses of the statute penalties are given for injuries to private property, merely personal and unconnected with the land; such as for injuries to ships, killing or destroying cattle, setting fire to corn or hay-stacks, and the like; these being the most important heads of injuries to mere personal property, are specially enacted on, and the present section is meant to give general redress in all cases, and to guard against any omission.

*To be a reasonable compensation for the damage, &c. not exceeding 5*l*.]* By this act, therefore, a party for an injury done to his land short of 40*s*. might receive full recompense and his costs; whereas if he were to sue by action for an injury to that amount, he would have his own costs to pay, unless the judge certified to give them to him.

Except where such party shall have been examined in proof of his offence.] It may be collected from this, that without any special enactment, though the party aggrieved might lodge the information, he might also be examined as a witness, to prove the charge; but if he is, he loses all claim to any part of the penalty; the objection, therefore, on the score of interest, being thereby wholly taken away; but he is now declared to be an admissible witness in all cases punishable by summary conviction, by stat. 7 & 8 G. 4. c. 29. § 64. and 7 & 8 G. 4. c. 30. § 29. See *post*, *Witness*.

The money shall be applied in such manner as every penalty imposed by a justice of peace under this act is hereafter directed to be applied.] That is, it shall be paid to some one overseer of the poor, or to some other officer (as the justice may direct), of the parish, &c. in which the offence shall have been committed, to be paid over to the use of the general rate of the county, riding, or division in which such parish shall be situate, pursuant to the directions of § 33. of this stat. 7 & 8 G. 4. c. 30., which section see at length under title *Penalty*; and this money is so to be disposed of where the conviction has taken place on the examination of the party aggrieved as a witness, or in case the property is of a public nature, or wherein any public right is concerned.

Provided that it shall not extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in pursuit of game, but every such trespass shall be punishable in the same manner as before the passing of this act.] Injuries done by persons on a supposition that they had a right to act so, in the pursuit of game or in sporting, cannot be deemed of themselves to be wilful or malicious, and to such only the statute applies. In those cases the party injured, is therefore left to punish them, not under this act, but as before, by an action of trespass. But, to afford to the party charged, the benefit of this proviso, it is not sufficient for him, merely to

Turnpike.

assert, that he claims a title, without showing some grounds to suppose that he has one; nor will the exemption as to the following game, extend to protect unqualified persons, or any person trespassing after notice, except those in pursuit of noxious animals; and even those cases will not justify wilful or excessive trespasses.

Trial.

BY stat. 7 & 8 G. 4. c. 29. § 54. a receiver of stolen property is declared to be guilty of felony, and liable to be tried as an accessory after the fact, or for a substantive felony. See the section at length, title *Receiver*.

By the same statute, section 56., receivers may be tried in any county or place where the principal would be triable, where the property was found in the receiver's possession, or where he received it. See section at length, title *Receiver*.

If a person is indicted for a misdemeanor for obtaining property under false pretences, which at the trial turns out to be larceny, he is not for that reason to be acquitted, by stat. 7 & 8 G. 4. c. 2. § 53. See section at length, title *Theft*.

Trustee.

A TRUSTEE disposing of property which he has on trust, is not liable under the embezzlement clause of stat. 7 & 8 G. 4. c. 29. by section 50. of that act; for which see *Embezzlement*.

Turnpike.

Breaking down
or destroying a
turnpike gate
or adjacent
erection, a mis-
demeanor.

BY stat. 7 & 8 G. 4. c. 30. § 14. it is enacted, "That if any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike-gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike-gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or acts of parliament relating thereto, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly."

Guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly.] That is, he must be convicted on an indictment for the offence, and such sentence given as the court shall think fit: it is not punishable by summary conviction.

A clause to the same effect is found in almost all turnpike acts, and it is so enacted in section 128. of the general turnpike act, 3 G. 4. c. 126. It is there declared to be felony; but so much of that act is repealed by stat. 3 & 4 G. 4. c. 27., and the offence now amounts to a misdemeanor only by this statute, the offence having been before declared to be so by stat. 1 G. 4. c. 115., which act is now in like manner repealed.

Underwood.

STEALING, or damaging with intent to steal, or rooting up, &c. any underwood, by stat. 7 & 8 G. 4. c. 29. § 30., and by stat. 7 & 8 G. 4. c. 30. § 19., is declared to be felony, and for which how punished, see those sections at large, title **Trees**.

Vegetable Production.

[See **Garden**.]

[See **Turnips**, 5 *Burn's Just.* 489., and **Trespass**, 5 *Burn's Just.* 643.]

THE *stealing* of vegetable productions from a garden, orchard, nursery, green-house, &c. subjected the offender to a summary conviction for the first offence, and to transportation for the second, by stat. 7 & 8 G. 4. c. 29. § 43., for which see title **Garden**, *ante*. This offence, when committed *in other places*, is punished by stat. 7 & 8 G. 4. c. 29. § 43., which enacts, "That if any person shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and *growing in any land open or inclosed, not being a garden, orchard, or nursery-ground*, every such offender, being convicted before a justice of the peace, shall, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding one calendar month, or else shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding 20s. as to the justice shall seem meet; and in default of payment thereof, together with the costs, (if ordered) shall be committed as aforesaid, for any term not exceeding one calendar month, unless payment be sooner made; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol

Person *stealing* any vegetable production, or cultivated root or plant, growing any where not in a garden, &c., shall forfeit, over and above the value, a fine, at the justice's discretion.

Second offence.

or house of correction, there to be kept to hard labour for such term, not exceeding six calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction.

Destroying or damaging any vegetable production growing on land open or inclosed, not being a garden, &c., to be imprisoned at the justice's discretion.

This section applies to the stealing, or damaging with intent to steal, the vegetable productions there mentioned, growing in the open or inclosed grounds. A similar enactment is made as to the *damaging and destroying* them by stat. 7 & 8 G. 4. c. 30. § 22., which enacts, "That if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, or nursery-ground, every such offender, being convicted thereof before a justice of the peace, shall, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one calendar month, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, shall be committed as aforesaid, for any term not exceeding one calendar month, unless payment be sooner made; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding six calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction."

Any cultivated root or plant used for the food of man or beast, &c.] From the use of the term *cultivated*, this clause would, of course, not apply to the spontaneous production of the earth, such as herbs found in fields or pastures, though they might also be cultivated in gardens; it will apply to such only as are sown or planted by man for the consumption of himself or his cattle, or for the purposes of medicine, dyeing, &c. The same vegetable productions are grown in gardens as well as in fields, such as, *e. g.* peas, turnips, and the like; and many medicinal plants and flowers grow wild, and are annually gathered for Apothecaries' Hall. The punishment, therefore, depends on the place in which they grow or are cultivated. The stealing, pulling up, or destroying turnips, potatoes, cabbages, parsnips, peas, or carrots was specially punished by stat. 13 G. 3. c. 32., and stat. 42 G. 3. c. 67., both of which statutes are repealed by stat. 7 & 8 G. 4. c. 27. These all come within the purview of this section.

Statutes repealed.

Growing in any land open or inclosed.] To make the offence complete under these sections, the vegetables or plants must have been sown or planted in such land, and have been taken up or pulled up when in a growing state. If they had been previously taken up by the owner and laid up, as potatoes, *e.g.* dug up and covered up in the ground during the winter season, it would be larceny to steal them, but the offence would not come under this section of stat. 7 & 8 G. 4. c. 30.

Or else shall forfeit and pay, over and above the value of the articles so stolen.] This is the only instance to be found in the statute book, in which a person guilty of larceny, which the term *stealing* imports, is allowed to compound for it in money; but the offence is, in fact, only a trespass, for the language in a declaration in an action of trespass is, "that the defendant had carried away and converted to his own use" the chattels, the taking of which is complained of. This applies to stat. 7 & 8 G. 4. c. 29., not to stat. 7 & 8 G. 4. c. 30., whose operation is confined to what is a mere trespass, and in which stealing or carrying away makes no part of the offence.

And if any person so convicted shall be afterwards guilty of any of the said offences, and be convicted thereof.] It cannot be too often inculcated on the attention of justices, that as the punishment for the second offence is so much more severe than the first, no second conviction should be made, without the production of the record from the proper officer, as directed by stat. 7 & 8 G. 4. c. 29. § 74., and stat. 7 & 8 G. 4. c. 30. § 40., to ascertain that the offence is *the same*. This is often illegally admitted to be done, verbally, by some person stating that "the party was before convicted of the same offence."

The statutes consolidated by this clause are 13 G. 3. c. 32., 42 G. 3. c. 67., 1 G. 4. c. 56., 6 G. 4. c. 127., and 7 G. 4. c. 69., all of which are repealed by stat. 7 & 8 G. 4. c. 27.

Verdict.

[See title *Dectr*, where see sections 26, 27, 28, and 29. stat. 7 & 8 G. 4. c. 29., punishment for stealing it, and proceedings against offenders.]

Verdict.

BY stat. 7 & 8 G. 4. c. 28. it is enacted, "That where any person shall be indicted for treason or felony, the jury impanelled to try such person shall not be charged to inquire concerning his lands, tenements, or goods, nor whether he fled for such treason or felony."

This was required by the law as it stood, but was, in fact, never put in practice, and is now, therefore, rightly abolished by this statute.

Wall.

BREAKING down or destroying any wall, is made an offence punishable by fine on conviction, by stat. 7 & 8 G. 4. c. 30. § 23., which see in full, under title *Fences*.

The description of wall meant here, is where the wall is used as a fence; the words of the section declaring the offence are, "any fence of any description, any wall, stile, or gate," all of which come under the description of fences.

Warehouse.

[See *Larceny*, 3 *Burn's Just.*]

BY stat. 7 & 8 G. 4. c. 29. § 15. breaking and entering a warehouse, and stealing therein any chattel, money, or valuable security, declared to be punishable by transportation and whipping. See section at length, title *Shop*.

Warrant.

WARRANTS are either to apprehend or to commit, or search-warrants. For warrants to apprehend, see *Apprehending* and *Process*.

Warrants of committal should specify the term of confinement, when the party is to be discharged. The time of imprisonment must be taken from the clause of the statute, under which the conviction takes place; but when it is for non-payment of a fine or penalty, as the period of imprisonment depends upon the magnitude of the fine, the committal should set out the sum, and always conclude "that such commitment was to be determinable upon payment of a sum certain, being the amount of the penalty and costs," or words to that effect.

A person taken in the act of committing any of the offences under stat. 7 & 8 G. 4. c. 29. may by § 63. of that act, or under stat. 7 & 8 G. 4. c. 30. by § 28. of that act, be apprehended without a warrant, for which sections see *Apprehending*; and see, as to warrant of committal, stat. 7 & 8 G. 4. c. 29. § 67.

Stealing any *dividend or other warrant*, being a security for money, is made felony by stat. 7 & 8 G. 4. c. 29. § 5., for which clause at length, see *Security*.

Search-warrants are grantable in the following cases: to search for stolen venison, for which see title *Deer*; for stolen wood, for which see *Wood*; shipwrecked goods, see *Wreck*; and in general cases under stat. 7 & 8 G. 4. c. 29. § 63.

By that stat. 7 & 8 G. 4. c. 29. § 63. for the more effectual apprehension and discovery of all offenders punishable under that act, it is enacted, "That if any credible witness shall prove upon oath before a justice of peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any such offence [that is, any offence punishable under that act] shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power, is required to apprehend and forthwith to carry before a justice of peace the party offering the same, together with such property, to be dealt with according to law."

Search-warrants for offences under stat. 7 & 8 G. 4. c. 29. how and in what cases to be granted.

The power of granting search-warrants is confined to this statute, no such power being given under stat. 7 & 8 G. 4. c. 30.

And in what cases a justice may issue either summonses or warrants, see *Process*.

Wharf.

STEALING goods from any wharf, dock, or quay, adjacent to any navigable river or canal, punishable with transportation by stat. 7 & 8 G. 4. c. 29. § 17., for which see *Ship*.

Will.

BY stat. 7 & 8 G. 4. c. 29. § 22. it is enacted, "That if any person shall, either during the life of the testator or testatrix, or after his or her death steal, or for any fraudulent purpose destroy or conceal any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument is the property of any person, or that the same is of any value."

Stealing of any will or testamentary paper, a misdemeanor.

A conviction under this clause in this statute is not admissible in evidence in any suit at law or equity, by stat. 7 & 8 G. 4. c. 29. § 24., for which see *Title Deeds*.

Witness.

BY stat. 7 & 8 G. 4. c. 30. § 29. it is enacted, "That on the prosecution of every offence punishable on summary conviction under that act, the evidence of the party aggrieved shall be admitted in proof of the offence, and also the evidence of any inhabitant of the county, riding, or division in which the offence shall have been committed, notwithstanding any forfeiture or penalty incurred by the offence may be payable to the general rate of such county, riding, or division."

And he is in like manner declared to be an admissible witness by stat. 7 & 8 G. 4. c. 29. § 64., in the same words as above, in all cases of prosecution for offences punishable on summary conviction under that act.

But when the party aggrieved is received as a witness, he forfeits all claim to the sum which the justice may award as a compensation for the injury, and it shall be paid to the overseer of the poor of the parish in which the offence was committed, and by him to be paid over to the county rate, by stat. 7 & 8 G. 4. c. 30. § 32., and stat. 7 & 8 G. 4. c. 29. § 66. See *Penalty*.

Wood.

[Same head, 5 *Burn's Just.*]

SETTING fire to any stacked wood is declared to be a felony by stat. 7 & 8 G. 4. c. 30. § 17.; which see at length, title *Burning*.

Wood found in any person's possession under a search-warrant, he may be convicted in a penalty.

Stealing trees, saplings, and the like, is made felony by stat. 7 & 8 G. 4. c. 29. § 38., for which see *Trees*. And the same declared for breaking, barking, or injuring them, by stat. 7 & 8 G. 4. c. 30. § 19.; for both sections, see *Trees*.

For the discovery of stolen wood, live or dead, by means of a search-warrant, by stat. 7 & 8 G. 4. c. 29. § 41. it is enacted, "That if the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile, or gate, or any part thereof, being of the value of two shillings at the least, shall, by virtue of a search-warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a justice of peace, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding two pounds."

See title *Trees*, where will be found what statutes on the subject are repealed.

Being of the value of two shillings at the least.] No search-warrant ought to be granted unless the wood lost is sworn to be of that value.

Search-warrant to be granted as hereinafter mentioned.] By stat. 6 & 7 G. 4. c. 29. § 63., for which see *Warrant*.

Woollen Goods.

DESTROYING or damaging any woollen goods, whether sole or mixed with other materials, any frame-work knitting, any machine-rack, or tenter-loom, or goods in the progress of manufacture, declared to be felony by stat. 7 & 8 G. 4. c. 30. § 3.; for which see *Manufactures*.

Wreck.

[See same head, 5 *Burn's Just.* 613.]

BY stat. 7 & 8 G. 4. c. 30. § 11., to procure or endeavour to procure the wreck of a ship by false lights, or to do any thing to destroy her, or to destroy any part of a ship, wrecked vessel, or goods belonging to her, was declared to be a capital felony; for which see the section at length, title *Ship*.

Plundering or stealing from any ship in distress, or if wrecked or stranded, a capital felony.

But further provisions are made by the following section of stat. 7 & 8 G. 4. c. 29. By § 18. of that statute it is enacted, "That if any person shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, every such offender, being convicted thereof, shall suffer death as a felon: provided always, that when articles of small value shall be stranded or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence, it shall be lawful to prosecute and punish the offender as for simple larceny; and in either case the offender may be indicted and tried, either in the county in which the offence shall have been committed, or in any county next adjoining."

Shall plunder or steal any part of any ship or vessel in distress.] By the term *any ship or vessel*, the offence is not confined to the plundering of *British* ships, but extends to the case of *foreign ships or vessels*.

Be in distress, or wrecked, stranded, or cast on shore.] *Being in distress* applies to the state of the vessel still afloat, but disabled, as by being waterlogged or having sprung a leak. To go on board a vessel in that helpless state, and plunder her, would come within this clause, as well as waiting till she struck, and then going on board and pillaging her. It seems to be doubtful

whether, in the case of the crew having deserted a vessel, the going on board and plundering her would be within the statute; the term distress rather applies to the crew as on board.

Persons in possession of shipwrecked goods not satisfactorily accounted for, they may be taken under a search-warrant and restored.

By the 19th section of the same statute it is enacted, "That if any goods, merchandise, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore as aforesaid, shall, by virtue of a search-warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender, on conviction of such offence before the justice, shall forfeit and pay, over and above the value of the goods, merchandise, or articles, such sum of money, not exceeding twenty pounds, as to the justice shall seem meet."

Shall, by virtue of a search-warrant, to be granted as hereinafter mentioned, be found in the possession of any person, &c.] This is a proper power given to the owner of shipwrecked property to get at the knowledge of it, and to enable the justice to restore it. The search-warrant is granted under the 63d section of stat. 7 & 8 G. 4. c. 29. on the oath of any credible witness; for which see § 63. at length, title *Warrant*.

Persons offering shipwrecked goods for sale may be stopped and seized.

And for the better enabling the owner to recover his goods so shipwrecked, by § 20. of the same stat. 7 & 8 G. 4. c. 29. it is enacted, "That if any person shall offer or expose for sale any goods, merchandise, or articles whatsoever, which shall have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress, or wrecked, stranded, or cast on shore as aforesaid, in every such case any person to whom the same shall be offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some justice of the peace; and if the person who shall have offered or exposed the same for sale, being duly summoned by such justice, shall not appear and satisfy the justice that he came lawfully by such goods, merchandise, or articles, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender, on conviction of such offence by the justice, shall forfeit and pay, over and above the value of the goods, merchandise, or articles, such sum of money, not exceeding 20*l.*, as to the justice shall seem meet."

The statutes 12 *Ann.* st. 2. c. 18., 26 G. 2. c. 19., respecting wrecks, are repealed by stat. 7 & 8 G. 4. c. 27.

Writings.

[See *Title Deeds*.]

BY stat. 7 & 8 G. 4. c. 29. § 23., the stealing of writings relating to real estate declared to be a misdemeanor. See section at length, head *Title Deeds*.

As to the *repeal* of the several statutes mentioned in stat. 7 & 8 G. 4. c. 27. mentioned *passim* in this work, it is enacted by § 2. of that act, “ That nothing in that act contained shall in anywise affect or alter such part of any act as relates to the post-office or to any branch of the public revenue, or to the naval, military, victualling, or other public stores of his Majesty, his heirs, or successors, except the acts of the 31st of Queen *Elizabeth*, and of the 22d of King *Charles* the Second, which are therein before repealed, or shall affect or alter any act relating to the Bank of *England* or *South Sea Company*.”

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